

By:

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S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to contracting and ethics issues of state agencies;
providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Section 2262.001, Government Code, is amended
by amending Subdivision (3) and adding Subdivision (3-a) to read as
follows:

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties
for the state agency[, as determined by the agency in consultation
with the state auditor].

(3-a) "Department" means the Department of
Information Resources.

SECTION 1.02. The heading to Section 2262.053, Government
Code, is amended to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

SECTION 1.03. Section 2262.053, Government Code, is amended
by amending Subsections (a) and (d) and adding Subsection (e) to
read as follows:

(a) In coordination with the [comptroller, Department of
Information Resources, and] state auditor and [the commission,
The University of Texas at Austin] shall develop [or administer] a

1 training program for contract managers.

2 (d) The commission [~~Texas Building and Procurement~~
3 ~~Commission~~] shall continue to administer the training program under
4 Section 2155.078 and coordinate the training it provides contract
5 managers under that section with the training provided under this
6 section. The commission shall certify contract managers who have
7 completed the contract management training required under this
8 section and Section 2155.078 and keep a list of those contract
9 managers.

10 (e) The program developed under this section must include a
11 separate class on ethics and contracting.

12 SECTION 1.04. Subchapter B, Chapter 2262, Government Code,
13 is amended by adding Section 2262.0535 and Sections
14 2262.055-2262.064 to read as follows:

15 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
16 University of Texas at Austin shall adapt the program developed
17 under Section 2262.053 to develop an abbreviated program for
18 training the members of the governing bodies of state agencies. The
19 training may be provided together with other required training for
20 members of state agency governing bodies.

21 (b) All members of the governing body of a state agency
22 shall complete at least one course of the training developed under
23 this section. This subsection does not apply to a state agency that
24 does not enter into any contracts.

25 Sec. 2262.055. USE OF UNIFORM FORMS. Each state agency
26 shall use the forms developed under Section 2262.104.

27 Sec. 2262.056. STATE AGENCY REPOSITORY. (a) Each state

1 agency shall maintain in a central location all contracts for that
2 agency.

3 (b) Each state agency shall provide the department
4 electronic copies of the contracts.

5 Sec. 2262.057. REPORTING CONTRACTOR PERFORMANCE. (a)
6 After a contract is completed or otherwise terminated, each state
7 agency shall:

8 (1) review the contractor's performance under the
9 contract; and

10 (2) send a written review of the contractor's
11 performance to the department.

12 (b) Using the form and criteria developed by the team under
13 Sections 2262.104 and 2262.105, the state agency shall classify the
14 contractor as approved, not approved, on probation, or suspended
15 for the contract solicitation process for that agency. The agency
16 shall provide the contractor classification to the department as
17 part of the performance review.

18 Sec. 2262.058. EXCLUDING CONTRACTOR FROM SOLICITATION
19 PROCESS. Based on its own contractor performance reviews and on
20 information in the database developed under Section 2262.059, a
21 state agency may exclude a contractor from the solicitation process
22 for a contract if the agency determines the contractor has
23 performed poorly on a previous state contract without regard to
24 whether the contractor has been barred under Section 2155.077.

25 Sec. 2262.059. CONTRACTS AND CONTRACTOR PERFORMANCE
26 DATABASE. (a) The department shall store in a database the
27 contracts and contractor performance reviews, including the

1 contractor classifications, provided to the department by state
2 agencies under this subchapter.

3 (b) The department shall make the database available to
4 state agencies and searchable by:

5 (1) contractor;

6 (2) contract value;

7 (3) state agency; and

8 (4) date, including both the beginning date and the
9 end date of the contract.

10 (c) The department shall develop a system that incorporates
11 the performance reviews and aggregates the reviews for each
12 contractor.

13 (d) A state agency may use the performance review database
14 to determine whether to award a contract to a contractor reviewed in
15 the database.

16 Sec. 2262.060. PERFORMANCE MEASURES; REPORTS. (a) Each
17 state agency shall develop a plan for incorporating performance
18 measures into all contracts entered into by the agency.

19 (b) Not later than March 1 of each year, each state agency
20 shall report to the governor, lieutenant governor, and speaker of
21 the house of representatives regarding performance measures in the
22 agency's contracts. The report must describe the agency's efforts
23 to include performance-based provisions in the agency's contracts.

24 (c) The agency shall make the report accessible to the
25 public on the agency's website.

26 Sec. 2262.061. CONTRACT MANAGERS. (a) Each state agency
27 that enters into contracts other than interagency contracts shall

1 establish a career ladder program for contract management in the
2 agency.

3 (b) An employee hired as a contract manager is responsible
4 for procurement planning, contract solicitation, contract
5 formation, price establishment, and contract oversight.

6 (c) Each state agency shall determine, in consultation with
7 the state auditor, the amount and significance of contract
8 management duties sufficient for an employee to be considered a
9 contract manager under this chapter.

10 Sec. 2262.062. APPROVAL OF CONTRACTS. (a) Each state
11 agency shall establish formal guidelines regarding who may approve
12 a contract for the agency.

13 (b) The guidelines must require that at least two persons
14 approve the contract, including a supervisor and a contract manager
15 certified under Section 2262.053. This subsection applies both to
16 contracts that agency staff is authorized to enter into without
17 further approval by the governing body and to contracts that must be
18 approved by the governing body.

19 (c) Each state agency shall annually report to the
20 commission a list of each person authorized to approve contracts at
21 the agency. The list must include the person's name, position, and
22 supervisory responsibility, if any.

23 Sec. 2262.063. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE
24 PROHIBITED. A state agency may not negotiate a contract with only
25 one employee engaging in the negotiation.

26 Sec. 2262.064. CONSISTENT PRICING BY CONTRACTORS. (a) The
27 commission shall solicit a contract for the creation of a mechanism

1 for tracking and comparing prices that state agencies pay for
2 similar products or services.

3 (b) On behalf of the state, a contractor awarded a contract
4 under Subsection (a) may renegotiate state agency contracts for
5 products or services to obtain the best value for the state when the
6 tracking and comparing mechanism shows a disparity in the price
7 paid for similar products or services. A contract under Subsection
8 (a) may allow the selected contractor to keep a percentage of the
9 savings obtained in the renegotiated contracts.

10 (c) A state agency shall give a contractor selected under
11 Subsection (a) the information the contractor requires for the
12 purpose of tracking and comparing prices that state agencies pay
13 for similar products and services.

14 (d) A contractor selected under Subsection (a) may not sell
15 information it receives under Subsection (c) or otherwise make use
16 of the information for a purpose other than performing its contract
17 with the state.

18 SECTION 1.05. Subchapter C, Chapter 2262, Government Code,
19 is amended by adding Sections 2262.104 and 2262.105 to read as
20 follows:

21 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The team
22 shall develop and publish a uniform set of definitions for use as
23 applicable in state contracts.

24 (b) The team shall develop and publish a uniform and
25 automated set of forms for use in the different stages of the
26 contracting process.

27 Sec. 2262.105. CLASSIFYING CONTRACTOR PERFORMANCE. (a)

1 The team shall develop criteria for use by state agencies in
2 classifying a contractor's performance under Section 2262.057.

3 (b) As part of the uniform forms published under Section
4 2262.104, the team shall develop a form for use by state agencies in
5 classifying a contractor's performance based on criteria developed
6 under Subsection (a).

7 SECTION 1.06. Chapter 2262, Government Code, is amended by
8 adding Subchapters D, E, and F to read as follows:

9 SUBCHAPTER D. CONTRACT PROVISIONS

10 Sec. 2262.151. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

11 (a) The team shall develop recommendations for contract terms
12 regarding penalties for contractors who do not comply with a
13 contract, including penalties for contractors who do not disclose
14 conflicts of interest under Section 2262.201. The team may develop
15 recommended contract terms that are generally applicable to state
16 contracts and terms that are applicable to important types of state
17 contracts.

18 (b) A state agency may include applicable recommended terms
19 in a contract entered into by the agency.

20 Sec. 2262.152. REQUIRED PROVISION RELATING TO
21 SUBCONTRACTOR COMPLIANCE. Each state agency contract must include
22 a provision that:

23 (1) holds the contractor responsible for the conduct
24 of all subcontractors in complying with the contractor's contract
25 with the state agency; and

26 (2) requires each subcontractor to disclose all
27 potential conflicts of interest to the state agency, according to

1 guidelines developed under Section 2262.201(b), when the
2 subcontractor contracts with or is otherwise hired by the
3 contractor.

4 Sec. 2262.153. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
5 STATE AGENCY EMPLOYEES. (a) The team shall develop a standard
6 contract provision requiring a contractor to disclose:

7 (1) each employee of the contractor who was employed
8 by the state at any time during the two years before the date of the
9 disclosure; and

10 (2) each state employee who was employed by the
11 contractor at any time during the year before the date of the
12 disclosure.

13 (b) A state agency shall include the provision in a contract
14 entered into by the agency.

15 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
16 OUTSOURCING. (a) Each contract entered into by a state agency must
17 include a provision requiring disclosure of any services required
18 to fulfill the contract, including services performed by a
19 subcontractor, that will be or are performed in a country other than
20 the United States.

21 (b) The contract must include a provision allowing the state
22 agency to terminate the contract and solicit a new contract if:

23 (1) the contractor or a subcontractor of the
24 contractor performs a service required to fulfill the contract in a
25 country other than the United States; and

26 (2) the contractor did not disclose in the contract at
27 the time the contract was originally entered into that the service

1 would be performed in a country other than the United States.

2 (c) A state agency that decides not to solicit a new
3 contract under circumstances in which the agency is authorized to
4 do so under a contract provision required by Subsection (b) shall
5 report this decision to:

6 (1) the governor;

7 (2) the lieutenant governor;

8 (3) the speaker of the house of representatives; and

9 (4) the team.

10 [Sections 2262.156-2262.200 reserved for expansion]

11 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

12 Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each
13 contractor who responds to a state agency's contract solicitation
14 shall disclose in its response all potential conflicts of interest
15 to the agency.

16 (b) The team shall develop guidelines to aid contractors and
17 state agencies in identifying potential conflicts of interest.

18 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING
19 CLASS. Each executive director of a state agency shall annually
20 complete the ethics and contracting class developed under Section
21 2262.053. This section does not apply to a state agency that does
22 not enter into any contracts.

23 [Sections 2262.203-2262.250 reserved for expansion]

24 SUBCHAPTER F. CHANGES TO CONTRACTS

25 Sec. 2262.251. CONTRACT AMENDMENTS. (a) An amendment to a
26 contract is subject to the same approval processes as the original
27 contract.

1 (b) A state agency may not amend a contract unless:

2 (1) the agency complies with the same approval
3 processes for the amendment as required for the original contract;
4 and

5 (2) a contract manager for the agency states in
6 writing why the amendment is necessary.

7 (c) This section does not require a new solicitation for a
8 new contract.

9 Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) A
10 contract amendment, including a contract extension, may not change
11 the monetary value of a contract by more than 10 percent.

12 (b) If a proposed contract amendment or extension changes
13 the monetary value of a contract by more than 10 percent, the state
14 agency must issue a new solicitation for a new contract.

15 SECTION 1.07. Section 2262.003, Government Code, is
16 transferred to Subchapter D, Chapter 2262, Government Code, as
17 added by this Act, is redesignated as Section 2262.155, Government
18 Code, and is amended to read as follows:

19 Sec. 2262.155 [2262.003]. REQUIRED [CONTRACT] PROVISION
20 RELATING TO AUDITING. (a) Each state agency shall include in each
21 of its contracts a term that provides that:

22 (1) the state auditor may conduct an audit or
23 investigation of any entity receiving funds from the state directly
24 under the contract or indirectly through a subcontract under the
25 contract; and

26 (2) acceptance of funds directly under the contract or
27 indirectly through a subcontract under the contract acts as

1 acceptance of the authority of the state auditor, under the
2 direction of the legislative audit committee, to conduct an audit
3 or investigation in connection with those funds.

4 (b) The state auditor shall provide assistance to a state
5 agency in developing the contract provisions.

6 SECTION 1.08. (a) Section 2262.063, Government Code, as
7 added by this article, applies only to a contract for which a state
8 agency first advertises or otherwise solicits bids, proposals,
9 offers, or qualifications on or after the effective date of this
10 Act.

11 (b) Section 2262.201(a), Government Code, as added by this
12 article, applies only in relation to a contract for which a state
13 agency first solicits bids, proposals, offers, or qualifications on
14 or after the date that the Contract Advisory Team's guidelines
15 regarding potential conflicts of interest take effect.

16 SECTION 1.09. Not later than March 1, 2006, The University
17 of Texas at Austin shall develop the training program, including
18 the ethics and contracting class, required by Section 2262.053,
19 Government Code, as amended by this article, and Section 2262.0535,
20 Government Code, as added by this article.

21 SECTION 1.10. A member of a governing body of a state agency
22 is not required to complete the training developed under Section
23 2262.0535, Government Code, as added by this article, until
24 September 1, 2007.

25 SECTION 1.11. An executive director of a state agency is not
26 required to comply with Section 2262.202, Government Code, as added
27 by this article, until September 1, 2007.

1 SECTION 1.12. A contract manager is not required to be
2 certified under Chapter 2262, Government Code, as amended by this
3 article, until September 1, 2007.

4 SECTION 1.13. (a) As soon as practicable, and not later
5 than March 1, 2006, the Contract Advisory Team shall develop the
6 forms, criteria, recommendations, and provisions required by this
7 article, including Sections 2262.104, 2262.105, 2262.151,
8 2262.153, and 2262.201(b), Government Code, as added by this
9 article.

10 (b) A state agency is not required to comply with Sections
11 2262.055-2262.062 and Sections 2262.152-2262.154, Government Code,
12 as added by this article, until September 1, 2007. A state agency
13 may comply earlier if the forms, electronic requirements, database,
14 or other items are available before that date.

15 ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCIAL DISCLOSURE,
16 STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

17 SECTION 2.01. Subchapter C, Chapter 572, Government Code,
18 is amended by adding Section 572.060 to read as follows:

19 Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR
20 EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) In this
21 section:

22 (1) "Legislative consultant" means:

23 (A) a person providing services under contract as
24 a consultant to the senate, the house of representatives, or a
25 member or committee of either house; or

26 (B) a person providing services under contract as
27 a consultant to a state agency in connection with legislation or

1 communications with members of the legislature or legislative
2 employees.

3 (2) "Legislative employee" means a person employed by:

4 (A) the senate, the house of representatives, or
5 a committee of either house; or

6 (B) a member of the legislature acting in the
7 member's official capacity.

8 (3) "Member of the governor's executive staff" means a
9 person employed by the governor acting in the governor's official
10 capacity whose regular job duties include:

11 (A) the formulation of policy or testifying
12 before and meeting with members of the legislature; or

13 (B) supervising other employees in the
14 governor's office whose regular job duties include those described
15 by Paragraph (A).

16 (4) "State agency legislative liaison" means an
17 employee of a state agency who serves as a legislative liaison or
18 government affairs officer or acts in a similar capacity or whose
19 regular job duties include testifying before and meeting with
20 members of the legislature.

21 (5) "State agency procurement agent" means an employee
22 of a state agency whose regular job duties include soliciting,
23 evaluating, or awarding bids, proposals, or contracts for the
24 procurement by the state agency of property or services.

25 (b) This section applies to an appointed officer, executive
26 head of a state agency, member of the governor's executive staff,
27 legislative employee, state agency legislative liaison, state

1 agency procurement agent, or legislative consultant.

2 (c) For purposes of this section, a person to whom this
3 section applies has a conflict of interest if the person has a
4 personal financial or other interest in the subject matter of a
5 governmental decision or action that compromises or has the
6 appearance of compromising the person's professional judgment or
7 integrity.

8 (d) A person to whom this section applies who has a conflict
9 of interest with respect to a governmental decision or action
10 shall:

11 (1) disclose the conflict in writing delivered to the
12 state officer or state agency employing or contracting with the
13 person; and

14 (2) abstain from further participation in the
15 governmental decision or action.

16 (e) A person who violates this section is liable for a civil
17 penalty of not less than \$500 and not more than the value of a
18 monetary gain the person receives because of the governmental
19 decision or action.

20 (f) Subsection (e) does not prohibit:

21 (1) the imposition of a civil penalty under Chapter
22 571; or

23 (2) removal of an appointed officer under Section
24 572.058 for conduct that violates both this section and Section
25 572.058.

26 SECTION 2.02. Section 572.060, Government Code, as added by
27 this article, applies only to participation in a governmental

1 decision made or action taken on or after September 1, 2005.
2 Participation in a governmental decision made or action taken
3 before September 1, 2005, is governed by the law in effect on the
4 date the decision is made or the action is taken, and the former law
5 is continued in effect for that purpose.

6 ARTICLE 3. EFFECTIVE DATE

7 SECTION 3.01. This Act takes effect September 1, 2005.

BILL ANALYSIS

Senate Research Center
79R13857 MXM-D

S.B. 12
By: Zaffirini et al.
Finance
4/28/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The manner in which state agencies engage in contracts with private and not-for-profit vendors is of vital concern for the state because it directly affects the use of state appropriated financial resources and, in some cases, the termination of state employee positions. In recent months, accounts have arisen that allege that some state agency employees engaged in improper actions when engaging in contracts on behalf of the state and investigations are currently underway by the Health and Human Services Commission. Examples like these highlight the need for increased oversight and training in the contracting process.

S.B. 12 improves the processes by which the state solicits, negotiates, enters into, and manages contracts with private and not-for-profit vendors by improving the training processes for employees involved in contracting; improving contract reporting mechanisms for state agencies; requiring needed provisions to address amendments; and addressing ethical issues specific to contracting.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Amends Section 2262.001, Government Code, by amending Subdivision (3) and adding Subdivision (3-a), to redefine "contract manager" and to define "department."

SECTION 1.02. Amends the heading to Section 2262.053, Government Code, to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

SECTION 1.03. Amends Section 2262.053, Government Code, by amending Subsections (a) and (d) and adding Subsection (e), as follows:

(a) Requires The University of Texas at Austin (UT-Austin), in coordination with the state auditor and the Texas Building and Procurement Commission (commission), rather than the comptroller of public accounts (comptroller), Department of Information Resources (department), state auditor, and the commission, to develop, rather than develop or administer, a training program for contract managers.

(d) Requires the commission to continue to administer the training program under Section 2155.078 and coordinate the training it provides contract managers under that section with the training provided under this section. Requires the commission to certify contract managers who have completed the contract management training required under this section and Section 2155.078 and to keep a list of those contract managers.

(e) Requires the program developed under this section to include a separate class on ethics and contracting.

SECTION 1.04. Amends Subchapter B, Chapter 2262, Government Code, by adding Sections 2262.0535 and Sections 2262.055-2262.064, as follows:

Sec. 2262.0535. **TRAINING FOR GOVERNING BODIES.** Requires UT-Austin to adapt the program developed under Section 2262.053 to develop an abbreviated program for training the members of the governing bodies of state agencies. Authorizes the training to be provided together with other required training for members of state agency governing bodies. Requires all members of the governing body of a state agency to complete at least one course of the training developed under this section. Provides that this subsection does not apply to a state agency that does not enter into any contracts.

Sec. 2262.055. **USE OF UNIFORM FORMS.** Requires each state agency to use the forms developed under Section 2262.104.

Sec. 2262.056. **STATE AGENCY REPOSITORY.** Requires each state agency to maintain in a central location all contracts for that agency. Requires each state agency to provide the department electronic copies of the contracts.

Sec. 2262.057. **REPORTING CONTRACTOR PERFORMANCE.** Requires each state agency, after a contract is completed or otherwise terminated, to review the contractor's performance under the contract and send a written review of the contractor's performance to the department. Requires the state agency, using the form and criteria developed by the team under Sections 2262.104 and 2262.105, to classify the contractor as approved, not approved, on probation, or suspended for the contract solicitation process for that agency. Requires the agency to provide the contractor classification to the department as part of the performance review.

Sec. 2262.058. **EXCLUDING CONTRACTOR FROM SOLICITATION PROCESS.** Authorizes a state agency, based on its own contractor performance reviews and on information in the database developed under Section 2262.059, to exclude a contractor from the solicitation process for a contract if the agency determines the contractor has performed poorly on a previous state contract without regard to whether the contractor has been barred under Section 2155.077.

Sec. 2262.059. **CONTRACTS AND CONTRACTOR PERFORMANCE DATABASE.** Requires the department to store in a database the contracts and contractor performance reviews, including the contractor classifications, provided to the department by state agencies under this subchapter. Requires the department to make the database available to state agencies and searchable by specific categories and to develop a system that incorporates the performance reviews and aggregates the reviews for each contractor. Authorizes a state agency to use the performance review database to determine whether to award a contract to a contractor reviewed in the database.

Sec. 2262.060. **PERFORMANCE MEASURES; REPORTS.** Requires each state agency to develop a plan for incorporating performance measures into all contracts entered into by the agency. Requires each state agency, not later than March 1 of each year, to report to the governor, lieutenant governor, and speaker of the house of representatives regarding performance measures in the agency's contracts. Requires the report to describe the agency's efforts to include performance-based provisions in the agency's contracts. Requires the agency to make the report accessible to the public on the agency's website.

Sec. 2262.061. **CONTRACT MANAGERS.** Requires each state agency that enters into contracts other than interagency contracts to establish a career ladder program for contract management in the agency. Provides that an employee hired as a contract manager is responsible for procurement planning, contract solicitation, contract formation, price establishment, and contract oversight. Requires each state agency to determine, in consultation with the state auditor, the amount and significance of contract management duties sufficient for an employee to be considered a contract manager under this chapter.

Sec. 2262.062. APPROVAL OF CONTRACTS. Requires each state agency to establish formal guidelines regarding who may approve a contract for the agency. Requires said guidelines to require that at least two persons approve the contract, including a supervisor and a contract manager certified under Section 2262.053. Provides that this subsection applies to both contracts that agency staff are authorized to enter into without further approval by the governing body and to contracts that must be approved by the governing body. Requires each state agency to annually report to the commission a list of each person authorized to approve contracts at the agency. Sets forth requirements for information to be included on the list.

Sec. 2262.063. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE PROHIBITED. Prohibits a state agency from negotiating a contract with only one employee engaging in the negotiation.

Sec. 2262.064. CONSISTENT PRICING BY CONTRACTORS. Requires the commission to solicit a contract for the creation of a mechanism for tracking and comparing prices that state agencies pay for similar products or services. Authorizes a contractor awarded a contract, on behalf of the state, to renegotiate state agency contracts for products or services to obtain the best value for the state when the tracking and comparing mechanism shows a disparity in the price paid for similar products or services. Authorizes a contract under this section to allow the selected contractor to keep a percentage of the savings obtained in the renegotiated contracts. Requires a state agency to give a contractor selected this section the information the contractor requires for the purpose of tracking and comparing prices that state agencies pay for similar products and services. Prohibits a contractor selected under this section from selling information it receives from a state agency under this section or otherwise making use of such information for a purpose other than performing its contract with the state.

SECTION 1.05. Amends Subchapter C, Chapter 2262, Government Code, by adding Sections 2262.104 and 2262.105, as follows:

Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. Requires the Contract Advisory Team created to assist state agencies in improving contract management practices (team) to develop and publish a uniform set of definitions for use as applicable in state contracts and a uniform and automated set of forms for use in the different stages of the contracting process.

Sec. 2262.105. CLASSIFYING CONTRACTOR PERFORMANCE. Requires the team to develop criteria for use by state agencies in classifying a contractor's performance under Section 2262.057. Requires the team, as part of the uniform forms published under Section 2262.104, to develop a form for use by state agencies in classifying a contractor's performance based on criteria developed under this section.

SECTION 1.06. Amends Chapter 2262, Government Code, by adding Subchapters D, E, and F, as follows:

SUBCHAPTER D. CONTRACT PROVISIONS

Sec. 2262.151. CONTRACT TERMS RELATING TO NONCOMPLIANCE. Requires the team to develop recommendations for contract terms regarding penalties for contractors who do not comply with a contract, including penalties for contractors who do not disclose conflicts of interest under Section 2262.201. Authorizes the team to develop recommended contract terms that are generally applicable to state contracts and terms that are applicable to important types of state contracts. Authorizes a state agency to include applicable recommended terms in a contract entered into by the agency.

Sec. 2262.152. REQUIRED PROVISION RELATING TO SUBCONTRACTOR COMPLIANCE. Requires each state agency to include a provision that holds the contractor responsible for the conduct of all subcontractors in complying with the contractor's contract with the state agency and requires each subcontractor to disclose all potential conflicts of interest to the state agency, according to guidelines developed under

Section 2262.201(b), when the subcontractor contracts with or is otherwise hired by the contractor.

Sec. 2262.153. **REQUIRED CONTRACTOR DISCLOSURE STATEMENT; STATE AGENCY EMPLOYEES.** Requires the team to develop a standard contract provision requiring a contractor to disclose each employee of the contractor who was employed by the state at any time during the two years before the date of the disclosure and each state employee who was employed by the contractor at any time during the year before the date of disclosure. Requires a state agency to include the provision in a contract entered into by the agency.

Sec. 2262.154. **REQUIRED CONTRACTOR DISCLOSURE STATEMENT; OUTSOURCING.** Requires each contract entered into by a state agency to include a provision requiring disclosure of any services required to fulfill the contract, including services performed by a subcontractor, that will be or are performed in a country other than the United States. Requires the contract to include a provision allowing the state agency to terminate the contract and solicit a new contract if certain situations occur. Requires a state agency that decides not to solicit a new contract under circumstances in which the agency is authorized to do so under a contract provision required by Subsection (b) to report that decision to the governor, the lieutenant governor, the speaker of the house of representatives, and the team.

[Reserves Sections 2262.156-2262.200 for expansion.]

SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

Sec. 2262.201. **CONTRACTOR CONFLICTS OF INTEREST.** Requires each contractor who responds to a state agency's contract solicitation to disclose in its response all potential conflicts of interest to the agency. Requires the team to develop guidelines to aid contractors and state agencies in identifying potential conflicts of interest.

Sec. 2262.202. **EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING CLASS.** Requires each executive director of a state agency to annually complete the ethics and contracting class developed under Section 2262.053. Provides that this section does not apply to a state agency that does not enter into any contracts.

[Reserves Sections 2262.203-2262.250 for expansion.]

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2262.251. **CONTRACT AMENDMENTS.** Provides that an amendment to a contract is subject to the same approval processes as the original contract. Prohibits a state agency from amending a contract unless the agency complies with the same approval processes for the amendment as required for the original contract and a contract manager for the agency states in writing why the amendment is necessary. Provides that this section does not require a new solicitation for a new contract.

Sec. 2262.252. **LARGE CHANGE IN CONTRACT VALUE.** Prohibits a contract amendment, including a contract extension, from changing the monetary value of a contract by more than ten percent. Requires the state agency, if a proposed contract amendment or extension changes the monetary value of a contract by more than ten percent, to issue a new solicitation for a new contract.

SECTION 1.07. Transfers Section 2262.003, Government Code, to Subchapter D, Chapter 2262, Government Code, as added by this Act, redesignates it as Section 2262.155, Government Code, and amends it as follows:

Sec. 2262.155. New heading: **REQUIRED PROVISION RELATING TO AUDITING.** Redesignated from existing Section 2262.003.

SECTION 1.08. (a) Makes application of Section 2262.063, Government Code, as added by this article, prospective.

(b) Makes application of Section 2262.201(a), Government Code, as added by this article, prospective.

SECTION 1.09. Requires UT-Austin, not later than March 1, 2006, to develop the training program, including the ethics and contracting class, required by Section 2262.053, Government Code, as amended by this article, and Section 2262.0535, Government Code, as added by this article.

SECTION 1.10. Provides that a member of a governing body of a state agency is not required to complete the training developed under Section 2262.0535, Government Code, as added by this article, until September 1, 2007.

SECTION 1.11. Provides that an executive director of a state agency is not required to comply with Section 2262.202, Government Code, as added by this article, until September 1, 2007.

SECTION 1.12. Provides that a contract manager is not required to be certified under Chapter 2262, Government Code, as amended by this article, until September 1, 2007.

SECTION 1.13. (a) Requires the team, as soon as practicable and not later than March 1, 2006, to develop the forms, criteria, recommendations, and provisions required by this article, including Sections 2262.104, 2262.105, 2262.151, 2262.153, and 2262.201(b), Government Code, as added by this article.

(b) Provides that a state agency is not required to comply with Sections 2262.055-2262.062 and Sections 2262.152-2262.154, Government Code, as added by this article, until September 1, 2007. Authorizes a state agency to comply earlier if the forms, electronic requirements, database, or other items are available before that date.

ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCE DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

SECTION 2.01. Amends Subchapter C, Chapter 572, Government Code, by adding Section 572.060, as follows:

Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) Defines "legislative consultant," "legislative employee," "member of the governor's executive staff," "state agency legislative liaison," and "state agency procurement agent."

(b) Provides that this section applies to an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant.

(c) Provides that, for purposes of this section, a person to whom this section applies has a conflict of interest if the person has a personal financial or other interest in the subject matter of a governmental decision or action that compromises or has the appearance of compromising the person's professional judgment or integrity.

(d) Requires a person to whom this section applies who has a conflict of interest with respect to a governmental decision or action to disclose the conflict in writing delivered to the state officer or state agency employing or contracting with the person and abstain from further participation in the governmental decision or action.

(e) Provides that a person who violates this section is liable for a civil penalty of not less than \$500 and not more than the value of a monetary gain the person receives because of the governmental decision or action.

(f) Provides that Subsection (e) does not prohibit the imposition of a civil penalty under Chapter 571 or removal of an appointed officer under Section 572.058 for conduct that violates both this section and Section 572.058.

SECTION 2.02. Makes application of Section 572.060, Government Code, as added by this article, prospective.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2005.

1-1 By: Zaffirini, et al. S.B. No. 12
 1-2 (In the Senate - Filed April 20, 2005; April 21, 2005, read
 1-3 first time and referred to Committee on Finance; May 11, 2005,
 1-4 reported adversely, with favorable Committee Substitute by the
 1-5 following vote: Yeas 10, Nays 0; May 11, 2005, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 12 By: Zaffirini

1-7 A BILL TO BE ENTITLED
 1-8 AN ACT

1-9 relating to contracting and ethics issues of state agencies;
 1-10 providing a civil penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

1-13 SECTION 1.01. Section 2262.001, Government Code, is amended
 1-14 by amending Subdivision (3) and adding Subdivision (3-a) to read as
 1-15 follows:

1-16 (3) "Contract manager" means a person who:

1-17 (A) is employed by a state agency; and

1-18 (B) has significant contract management duties
 1-19 for the state agency[, ~~as determined by the agency in consultation~~
 1-20 ~~with the state auditor~~].

1-21 (3-a) "Executive director" means the administrative
 1-22 head of a state agency.

1-23 SECTION 1.02. Subchapter A, Chapter 2262, Government Code,
 1-24 is amended by adding Section 2262.0015 to read as follows:

1-25 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. The
 1-26 commission by rule shall establish threshold requirements that
 1-27 exclude small or routine contracts, including purchase orders, from
 1-28 the application of this chapter.

1-29 SECTION 1.03. The heading to Section 2262.053, Government
 1-30 Code, is amended to read as follows:

1-31 Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

1-32 SECTION 1.04. Section 2262.053, Government Code, is amended
 1-33 by amending Subsections (a) and (d) and adding Subsections (e) and
 1-34 (f) to read as follows:

1-35 (a) In coordination with the comptroller, Department of
 1-36 Information Resources, [and] state auditor, and Health and Human
 1-37 Services Commission, the commission shall develop [or administer] a
 1-38 training program for contract managers.

1-39 (d) The commission [~~Texas Building and Procurement~~
 1-40 ~~Commission~~] shall administer the training program under this
 1-41 section.

1-42 (e) The commission shall certify contract managers who have
 1-43 completed the contract management training required under this
 1-44 section and keep a list of those contract managers.

1-45 (f) The program developed under this section must include a
 1-46 separate class on ethics and contracting.

1-47 SECTION 1.05. Subchapter B, Chapter 2262, Government Code,
 1-48 is amended by adding Section 2262.0535 and Sections 2262.055
 1-49 through 2262.066 to read as follows:

1-50 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
 1-51 commission shall adapt the program developed under Section 2262.053
 1-52 to develop an abbreviated program for training the members of the
 1-53 governing bodies of state agencies. The training may be provided
 1-54 together with other required training for members of state agency
 1-55 governing bodies.

1-56 (b) All members of the governing body of a state agency
 1-57 shall complete at least one course of the training developed under
 1-58 this section. This subsection does not apply to a state agency that
 1-59 does not enter into any contracts.

1-60 Sec. 2262.055. FEEES FOR TRAINING. The commission shall set
 1-61 and collect a fee from state agencies that receive training under
 1-62 this subchapter in an amount that recovers the commission's costs
 1-63 for the training.

2-1 Sec. 2262.056. STATE AGENCY REPOSITORY. Each state agency
 2-2 shall maintain in a central location all contracts for that agency.

2-3 Sec. 2262.057. CONTRACTS DATABASE. (a) The commission
 2-4 shall store in a database information on contracts provided by
 2-5 state agencies under this section.

2-6 (b) Each state agency shall periodically provide to the
 2-7 commission information regarding contracts entered into by the
 2-8 agency, including:

2-9 (1) the name of the contractor;
 2-10 (2) the contract value;
 2-11 (3) the beginning date and end date of the contract;
 2-12 (4) a description of any amendments made to the
 2-13 contract;

2-14 (5) payments made or outstanding under the contract;
 2-15 (6) key contract terms that have not yet been
 2-16 performed; and

2-17 (7) any other information that the commission
 2-18 considers necessary for the database created under this section.

2-19 (c) The commission shall set appropriate criteria to
 2-20 determine when and what information should be updated.

2-21 (d) The commission shall make the database available to
 2-22 state agencies and searchable by:

2-23 (1) contractor;
 2-24 (2) contract value;
 2-25 (3) state agency; and
 2-26 (4) date, including both the beginning date and the
 2-27 end date of the contract.

2-28 Sec. 2262.058. REPORTING CONTRACTOR PERFORMANCE.

2-29 (a) After a contract is completed or otherwise terminated, each
 2-30 state agency shall review the contractor's performance under the
 2-31 contract.

2-32 (b) Using the forms developed by the team under Sections
 2-33 2262.104 and 2262.105, the state agency shall report to the
 2-34 commission on the results of the review regarding the contractor's
 2-35 performance under the contract.

2-36 Sec. 2262.059. CONTRACTOR PERFORMANCE DATABASE. (a) The
 2-37 commission shall store in a database contractor performance reviews
 2-38 as provided by this section.

2-39 (b) The commission shall evaluate the contractor's
 2-40 performance based on the information reported under Section
 2-41 2262.058 and criteria established by the commission.

2-42 (c) The commission shall develop a database that
 2-43 incorporates the performance reviews and aggregates the reviews for
 2-44 each contractor.

2-45 (d) A state agency may use the performance review database
 2-46 to determine whether to award a contract to a contractor reviewed in
 2-47 the database.

2-48 Sec. 2262.060. EXCLUDING CONTRACTOR FROM SOLICITATION
 2-49 PROCESS. Based on its own contractor performance reviews and on
 2-50 information in the database developed under Section 2262.059, a
 2-51 state agency may exclude a contractor from the solicitation process
 2-52 for a contract if the agency determines the contractor has
 2-53 performed poorly on a previous state contract without regard to
 2-54 whether the contractor has been barred under Section 2155.077.

2-55 Sec. 2262.061. PERFORMANCE MEASURES; REPORTS. (a) Each
 2-56 state agency shall develop a plan for incorporating performance
 2-57 measures into all contracts entered into by the agency.

2-58 (b) This includes ensuring that performance measures are
 2-59 written into each contract prior to execution.

2-60 (c) Not later than March 1 of each year, each state agency
 2-61 shall report to the team, governor, lieutenant governor, and
 2-62 speaker of the house of representatives regarding performance
 2-63 measures in the agency's contracts. The report must describe the
 2-64 agency's efforts to include performance-based provisions in the
 2-65 agency's contracts.

2-66 (d) The state agency shall make the report accessible to the
 2-67 public on the agency's website.

2-68 Sec. 2262.062. CONTRACT MANAGERS. (a) Each state agency
 2-69 that enters into contracts other than interagency contracts shall

3-1 establish a career ladder program for contract management in the
 3-2 agency.

3-3 (b) An employee hired as a contract manager shall oversee
 3-4 and may, as appropriate, engage in procurement planning, contract
 3-5 solicitation, contract formation, price establishment, and other
 3-6 contract activities.

3-7 (c) Each state agency shall determine, in consultation with
 3-8 the state auditor, the amount and significance of contract
 3-9 management duties sufficient for an employee to be considered a
 3-10 contract manager under this chapter.

3-11 Sec. 2262.063. APPROVAL OF CONTRACTS. (a) Each state
 3-12 agency shall establish formal guidelines regarding who may approve
 3-13 a contract for the agency.

3-14 (b) The guidelines must require that at least two persons
 3-15 approve the contract, including a supervisor and a contract manager
 3-16 certified under Section 2262.053. This subsection applies both to
 3-17 contracts that agency staff is authorized to enter into without
 3-18 further approval by the governing body and to contracts that must be
 3-19 approved by the governing body.

3-20 (c) For state agency contracts valued in excess of \$1
 3-21 million the agency executive director must authorize a contract
 3-22 amendment in writing.

3-23 (d) Each state agency shall annually report to the
 3-24 commission a list of each person authorized to approve contracts at
 3-25 the agency. The list must include the person's name, position, and
 3-26 supervisory responsibility, if any.

3-27 Sec. 2262.064. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE
 3-28 PROHIBITED. A state agency may not negotiate a contract with only
 3-29 one employee engaging in the negotiation.

3-30 Sec. 2262.065. CONSISTENT PRICING BY CONTRACTORS. (a) The
 3-31 commission shall solicit a contract for the creation of a mechanism
 3-32 for tracking and comparing prices that state agencies pay for
 3-33 similar products or services.

3-34 (b) On behalf of the state, a contractor awarded a contract
 3-35 under Subsection (a) may renegotiate state agency contracts for
 3-36 products or services to obtain the best value for the state when the
 3-37 tracking and comparing mechanism shows a disparity in the price
 3-38 paid for similar products or services. A contract under Subsection
 3-39 (a) may allow the selected contractor to keep a percentage of the
 3-40 savings obtained in the renegotiated contracts.

3-41 (c) A state agency shall give a contractor selected under
 3-42 Subsection (a) the information the contractor requires for the
 3-43 purpose of tracking and comparing prices that state agencies pay
 3-44 for similar products and services.

3-45 (d) A contractor selected under Subsection (a) may not sell
 3-46 information it receives under Subsection (c) or otherwise make use
 3-47 of the information for a purpose other than performing its contract
 3-48 with the state.

3-49 Sec. 2262.066. EXCEPTION TO RENEGOTIATION REQUIREMENT.
 3-50 (a) A state agency may exclude a contract from the application of
 3-51 Section 2262.065 if it determines that renegotiation of the
 3-52 contract under that section will affect the state negatively. The
 3-53 state agency must notify the commission, lieutenant governor, and
 3-54 speaker of the house of representatives regarding this
 3-55 determination and explain why renegotiation of the contract is
 3-56 contrary to the state's overall interest.

3-57 (b) The commission may overrule the determination. The
 3-58 commission must notify the lieutenant governor and speaker of the
 3-59 house of representatives if it overrules the determination.

3-60 (c) The commission shall adopt rules and procedures to
 3-61 document this process, including a requirement that the executive
 3-62 directors of the commission and the state agency making the
 3-63 determination formally approve the determination by signature or
 3-64 other appropriate method.

3-65 SECTION 1.06. Subchapter C, Chapter 2262, Government Code,
 3-66 is amended by adding Sections 2262.104 and 2262.105 to read as
 3-67 follows:

3-68 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The
 3-69 team shall develop and publish a uniform set of definitions for use

as applicable in state contracts.

(b) The team shall develop and publish a uniform and automated set of forms that a state agency may use in the different stages of the contracting process.

Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE. As part of the uniform forms published under Section 2262.104, the team shall develop forms for use by state agencies in reporting a contractor's performance under Section 2262.058.

SECTION 1.07. Chapter 2262, Government Code, is amended by adding Subchapters D, E, and F to read as follows:

SUBCHAPTER D. CONTRACT PROVISIONS

Sec. 2262.151. USE OF UNIFORM FORMS. A state agency may use the forms developed under Section 2262.104 as templates, guides, or samples for contracts entered into by the agency.

Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE. (a) The team shall develop recommendations for contract terms regarding penalties for contractors who do not comply with a contract, including penalties for contractors who do not disclose conflicts of interest under Section 2262.201. The team may develop recommended contract terms that are generally applicable to state contracts and terms that are applicable to important types of state contracts.

(b) A state agency may include applicable recommended terms in a contract entered into by the agency.

Sec. 2262.153. REQUIRED PROVISION RELATING TO SUBCONTRACTOR COMPLIANCE. Each state agency contract must require that each contractor provide a list of all subcontractors and include a provision that:

(1) holds the contractor responsible for the conduct of all subcontractors in complying with the contractor's contract with the state agency; and

(2) requires each subcontractor to disclose all potential conflicts of interest to the state agency, according to guidelines developed under Section 2262.201(b), when the subcontractor contracts with or is otherwise hired by the contractor.

Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT; STATE AGENCY EMPLOYEES. (a) The team shall develop a standard contract provision requiring a contractor and subcontractor to disclose each employee:

(1) who was employed by:

(A) the state at any time during the two years before the date of the disclosure and is now employed by the contractor; and

(B) the contractor at any time during the year before the date of the disclosure and is now employed by the state; and

(2) who is:

(A) materially involved in the development of the contract terms or the management of the contract; or

(B) employed at the executive level with the contractor.

(b) A state agency shall include the provision in a contract entered into by the agency.

Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT; OUTSOURCING. (a) Each contract entered into by a state agency must include a provision requiring disclosure of any services materially necessary to fulfill the contract, including services performed by a subcontractor, that will be or are performed in a country other than the United States. This section does not apply to services that are incidental to fulfilling the contract.

(b) The contract must include a provision allowing the state agency to terminate the contract and solicit a new contract if:

(1) the contractor or a subcontractor of the contractor performs a service materially necessary to fulfill the contract in a country other than the United States; and

(2) the contractor did not disclose in the contract at the time the contract was originally entered into that the service would be performed in a country other than the United States.

(c) A state agency that decides not to solicit a new contract under circumstances in which the agency is authorized to do so under a contract provision required by Subsection (b) shall report this decision to:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives; and
- (4) the team.

[Sections 2262.157-2262.200 reserved for expansion]

SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each contractor who responds to a state agency's contract solicitation shall disclose in its response all potential conflicts of interest to the agency.

(b) The team shall develop guidelines to aid contractors and state agencies in identifying potential conflicts of interest.

Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING CLASS. Each executive director of a state agency shall annually complete the ethics and contracting class developed under Section 2262.053. This section does not apply to a state agency that does not enter into any contracts.

[Sections 2262.203-2262.250 reserved for expansion]

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2262.251. CONTRACT AMENDMENTS AND CHANGE ORDERS. (a) An amendment to a contract, including a change order, is subject to the same approval processes as the original contract.

(b) A state agency may not amend a contract unless:

- (1) the agency complies with the same approval processes for the amendment as required for the original contract; and

(2) a contract manager for the agency states in writing why the amendment is necessary.

(c) This section does not require a new solicitation for a new contract.

Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. If a proposed contract amendment or extension changes the monetary value of a contract by more than 10 percent, the state agency must obtain review and approval from the team and the agency's executive director before the agency amends or extends the contract.

SECTION 1.08. Section 2262.003, Government Code, is transferred to Subchapter D, Chapter 2262, Government Code, as added by this Act, is redesignated as Section 2262.156, Government Code, and is amended to read as follows:

Sec. 2262.156 [~~2262.003~~]. REQUIRED [CONTRACT] PROVISION RELATING TO AUDITING. (a) Each state agency shall include in each of its contracts a term that provides that:

(1) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract; and

(2) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

(b) The state auditor shall provide assistance to a state agency in developing the contract provisions.

SECTION 1.09. (a) Section 2262.064, Government Code, as added by this article, applies only to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act.

(b) Subsection (a), Section 2262.201, Government Code, as added by this article, applies only in relation to a contract for which a state agency first solicits bids, proposals, offers, or qualifications on or after the date that the Contract Advisory Team's guidelines regarding potential conflicts of interest take effect.

SECTION 1.10. Not later than March 1, 2006, the Texas

Building and Procurement Commission shall develop the training program, including the ethics and contracting class, required by Section 2262.053, Government Code, as amended by this article, and Section 2262.0535, Government Code, as added by this article.

SECTION 1.11. A member of a governing body of a state agency is not required to complete the training developed under Section 2262.0535, Government Code, as added by this article, until September 1, 2007.

SECTION 1.12. An executive director of a state agency is not required to comply with Section 2262.202, Government Code, as added by this article, until September 1, 2007.

SECTION 1.13. A contract manager is not required to be certified under Chapter 2262, Government Code, as amended by this article, until September 1, 2007.

SECTION 1.14. (a) As soon as practicable, and not later than March 1, 2006, the Contract Advisory Team shall develop the forms, criteria, recommendations, and provisions required by this article, including Sections 2262.104, 2262.105, 2262.152, and 2262.154 and Subsection (b), Section 2262.201, Government Code, as added by this article.

(b) A state agency is not required to comply with Sections 2262.056 through 2262.063 and Sections 2262.153, 2262.154, and 2262.155, Government Code, as added by this article, until September 1, 2007. A state agency may comply earlier if the forms, electronic requirements, database, or other items are available before that date.

ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

SECTION 2.01. Subchapter C, Chapter 572, Government Code, is amended by adding Section 572.060 to read as follows:

Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) In this section:

(1) "Legislative consultant" means:

(A) a person providing services under contract as a consultant to the senate, the house of representatives, or a member or committee of either house; or

(B) a person providing services under contract as a consultant to a state agency in connection with legislation or communications with members of the legislature or legislative employees.

(2) "Legislative employee" means a person employed by:

(A) the senate, the house of representatives, or a committee of either house; or

(B) a member of the legislature acting in the member's official capacity.

(3) "Member of the governor's executive staff" means a person employed by the governor acting in the governor's official capacity whose regular job duties include:

(A) the formulation of policy or testifying before and meeting with members of the legislature; or

(B) supervising other employees in the governor's office whose regular job duties include those described by Paragraph (A).

(4) "State agency legislative liaison" means an employee of a state agency who serves as a legislative liaison or government affairs officer or acts in a similar capacity or whose regular job duties include testifying before and meeting with members of the legislature.

(5) "State agency procurement agent" means an employee of a state agency whose regular job duties include soliciting, evaluating, or awarding bids, proposals, or contracts for the procurement by the state agency of property or services.

(b) This section applies to an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant.

(c) For purposes of this section, a person to whom this section applies has a conflict of interest if the person has a

personal financial or other interest in the subject matter of a governmental decision or action that compromises or has the appearance of compromising the person's professional judgment or integrity.

(d) A person to whom this section applies who has a conflict of interest with respect to a governmental decision or action shall:

(1) disclose the conflict in writing delivered to the state officer or state agency employing or contracting with the person; and

(2) abstain from further participation in the governmental decision or action.

(e) A person who violates this section is liable for a civil penalty of not less than \$500 and not more than the value of a monetary gain the person receives because of the governmental decision or action.

(f) Subsection (e) does not prohibit:

(1) the imposition of a civil penalty under Chapter 571; or

(2) removal of an appointed officer under Section 572.058 for conduct that violates both this section and Section 572.058.

SECTION 2.02. Section 572.060, Government Code, as added by this article, applies only to participation in a governmental decision made or action taken on or after September 1, 2005. Participation in a governmental decision made or action taken before September 1, 2005, is governed by the law in effect on the date the decision is made or the action is taken, and the former law is continued in effect for that purpose.

ARTICLE 3. CHANGES RELATED TO STATE AUDIT CONTRACTS

SECTION 3.01. Subsection (a), Section 321.020, Government Code, is amended to read as follows:

(a) Notwithstanding any other law, a state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), may employ a private auditor to audit the state agency or corporation only if:

(1) the agency or corporation is authorized to contract with a private auditor ~~[do so by law or]~~ through a delegation of authority from the state auditor;

(2) the scope of the proposed audit has been submitted to the state auditor for review and comment; and

(3) the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

SECTION 3.02. Subsection (a), Section 2113.102, Government Code, is amended to read as follows:

(a) A state agency may not use appropriated money to contract with a person to audit ~~[the financial records or accounts of]~~ the agency except:

(1) as provided by ~~[(1)]~~ Subsections (b), (c), and (d); and
(2) in accordance with Section 321.020 ~~[Chapter 466, pertaining to the state lottery,~~

~~[(3) Chapter 2306, pertaining to the Texas Department of Housing and Community Affairs, and~~

~~[(4) Chapter 361, Transportation Code, pertaining to the Texas Turnpike Authority division of the Texas Department of Transportation].~~

SECTION 3.03. Subsection (a), Section 321.020, Government Code, as amended by this article, applies only to a contract that is entered into, amended, extended, or renewed on or after the effective date of this Act.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. This Act takes effect September 1, 2005.

* * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR HB HCR HJR 12
By Zaffirini
(Author/Senate Sponsor)
5/11/05
(date)

Sir:

We, your Committee on FINANCE, to which was referred the attached measure,
have on May 9, 2005, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed
☒ the caption remained the same as original measure
☐ the caption changed with adoption of the substitute

☐ do pass as substituted, and be ordered not printed

☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Ogden, Chair	<input checked="" type="checkbox"/>			
Senator Zaffirini, Vice Chair	<input checked="" type="checkbox"/>			
Senator Averitt	<input checked="" type="checkbox"/>			
Senator Barrientos	<input checked="" type="checkbox"/>			
Senator Brimer			<input checked="" type="checkbox"/>	
Senator Deuell	<input checked="" type="checkbox"/>			
Senator Duncan			<input checked="" type="checkbox"/>	
Senator Janek			<input checked="" type="checkbox"/>	
Senator Nelson	<input checked="" type="checkbox"/>			
Senator Shapiro			<input checked="" type="checkbox"/>	
Senator Shapleigh	<input checked="" type="checkbox"/>			
Senator Staples	<input checked="" type="checkbox"/>			
Senator West	<input checked="" type="checkbox"/>			
Senator Whitmire			<input checked="" type="checkbox"/>	
Senator Williams	<input checked="" type="checkbox"/>			
TOTAL VOTES	10	0	5	0

COMMITTEE ACTION

- ☒ S260 Considered in public hearing
☒ S270 Testimony taken

[Signature]
COMMITTEE CLERK

[Signature]
CHAIR

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

SB 12

SENATE COMMITTEE REPORT

Finance

May 9, 2005 - 9:30AM

FOR BILL/FOR COMMITTEE SUBSTITUTE :

Hagert, Celia Senior Policy Analyst (Center for Public Policy Priorities), Austin, TX
O'Conner, Caroline Legislative Director (Texas State Employees Union), Austin, TX

ON BILL/ON COMMITTEE SUBSTITUTE :

Keel, John State Auditor (State Auditor's Office), Austin, TX
Lanier, Dustin Director (DIR), Austin, TX
Reed, Cindy Executive Director - Texas Building and Procurement (Texas Building and Procurement), Austin, TX

Registering, but not testifying:

On Bill/On Committee Substitute :

Wattles, Dan (State Auditor's Office), Austin, TX
Young, John (State Auditor's Office), Austin, TX

Providing written testimony:

For Bill/For Committee Substitute :

Homer, Andrew Government Relations (Texas Public Employees Association), Austin, TX

BILL ANALYSIS

Senate Research Center

C.S.S.B. 12
By: Zaffirini et al.
Finance
5/10/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The manner in which state agencies engage in contracts with private and not-for-profit vendors is of vital concern for the state because it directly affects the use of state appropriated financial resources and, in some cases, the termination of state employee positions. In recent months, accounts have arisen that allege that some state agency employees engaged in improper actions when engaging in contracts on behalf of the state and investigations are currently underway by the Health and Human Services Commission. Examples like these highlight the need for increased oversight and training in the contracting process.

C.S.S.B. 12 improves the processes by which the state solicits, negotiates, enters into, and manages contracts with private and not-for-profit vendors by improving the training processes for employees involved in contracting; improving contract reporting mechanisms for state agencies; requiring needed provisions to address amendments; and addressing ethical issues specific to contracting.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Building and Procurement Commission in SECTION 1.02 (Section 2262.0015, Government Code) and SECTION 1.05 (Section 2262.066, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Amends Section 2262.001, Government Code, by amending Subdivision (3) and adding Subdivision (3-a), to redefine "contract manager" and to define "executive director."

SECTION 1.02. Amends Subchapter A, Chapter 2262, Government Code, by adding Section 2262.0015, as follows:

Sec. 2262.0015. **APPLICABILITY TO CERTAIN CONTRACTS.** Requires the Texas Building and Procurement Commission (commission), by rule, to establish threshold requirements that exclude small or routine contracts, including purchase orders, from the application of this chapter.

SECTION 1.03. Amends the heading to Section 2262.053, Government Code, to read as follows:

Sec. 2262.053. **TRAINING FOR CONTRACT MANAGERS.**

SECTION 1.04. Amends Section 2262.053, Government Code, by amending Subsections (a) and (d) and adding Subsections (e) and (f), as follows:

(a) Requires the commission, in coordination with the comptroller of public accounts (comptroller), Department of Information Resources (department), state auditor, and the Health and Human Services Commission (HHSC), to develop, rather than develop or administer, a training program for contract managers.

(d) Makes a nonsubstantive change.

(e) Requires the commission to certify contract managers who have completed the contract management training required under this section and keep a list of those contract managers.

(f) Requires the program developed under this section to include a separate class on ethics and contracting.

SECTION 1.05. Amends Subchapter B, Chapter 2262, Government Code, by adding Sections 2262.0535 and Sections 2262.055-2262.066, as follows:

Sec. 2262.0535. **TRAINING FOR GOVERNING BODIES.** Requires the commission to adapt the program developed under Section 2262.053 to develop an abbreviated program for training the members of the governing bodies of state agencies. Authorizes the training to be provided together with other required training for members of state agency governing bodies. Requires all members of the governing body of a state agency to complete at least one course of the training developed under this section. Provides that this subsection does not apply to a state agency that does not enter into any contracts.

Sec. 2262.055. **FEES FOR TRAINING.** Requires the commission to set and collect a fee from state agencies that receive training under this subchapter in an amount that recovers the commission's costs for the training.

Sec. 2262.056. **STATE AGENCY REPOSITORY.** Requires each state agency to maintain in a central location all contracts for that agency.

Sec. 2262.057. **CONTRACTS DATABASE.** Requires the commission to store in a database information on contracts provided by state agencies under this section. Requires each state agency to periodically provide to the commission information regarding contracts entered into by the agency, including certain information. Requires the commission to set appropriate criteria to determine when and what information should be updated. Requires the commission to make the database available to state agencies and searchable by specific categories.

Sec. 2262.058. **REPORTING CONTRACTOR PERFORMANCE.** Requires each state agency, after a contract is completed or otherwise terminated, to review the contractor's performance under the contract. Requires the state agency, using the form and criteria developed by the team under Sections 2262.104 and 2262.105, to report to the commission on the results of the review regarding the contractor's performance under the contract.

Sec. 2262.059. **CONTRACTOR PERFORMANCE DATABASE.** Requires the commission to store in a database contractor performance reviews, as provided by this section. Requires the commission to evaluate the contractor's performance based on the information reported under Section 2262.058 and criteria established by the commission. Requires the commission to develop a database that incorporates the performance reviews and aggregates the reviews for each contractor. Authorizes a state agency to use the performance review database to determine whether to award a contract to a contractor reviewed in the database.

Sec. 2262.060. **EXCLUDING CONTRACTOR FROM SOLICITATION PROCESS.** Authorizes a state agency, based on its own contractor performance reviews and on information in the database developed under Section 2262.059, to exclude a contractor from the solicitation process for a contract if the agency determines the contractor has performed poorly on a previous state contract without regard to whether the contractor has been barred under Section 2155.077.

Sec. 2262.061. **PERFORMANCE MEASURES; REPORTS.** Requires each state agency to develop a plan for incorporating performance measures into all contracts entered into by the agency. Provides that this includes ensuring that performance measures are written into each contract prior to execution. Requires each state agency,

not later than March 1 of each year, to report to the team, governor, lieutenant governor, and speaker of the house of representatives regarding performance measures in the agency's contracts. Requires the report to describe the agency's efforts to include performance-based provisions in the agency's contracts. Requires the agency to make the report accessible to the public on the agency's website.

Sec. 2262.062. **CONTRACT MANAGERS.** Requires each state agency that enters into contracts other than interagency contracts to establish a career ladder program for contract management in the agency. Requires an employee hired as a contract manager to oversee, and authorizes said employee, as appropriate, to engage in procurement planning, contract solicitation, contract formation, price establishment, and other contract activities. Requires each state agency to determine, in consultation with the state auditor, the amount and significance of contract management duties sufficient for an employee to be considered a contract manager under this chapter.

Sec. 2262.063. **APPROVAL OF CONTRACTS.** Requires each state agency to establish formal guidelines regarding who may approve a contract for the agency. Requires said guidelines to require that at least two persons approve the contract, including a supervisor and a contract manager certified under Section 2262.053. Provides that this subsection applies to both contracts that agency staff are authorized to enter into without further approval by the governing body and to contracts that must be approved by the governing body. Requires a state agency's executive director, for state agency contracts valued in excess of \$1 million, to authorize a contract amendment in writing. Requires each state agency to annually report to the commission a list of each person authorized to approve contracts at the agency. Sets forth requirements for information to be included on the list.

Sec. 2262.064. **NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE PROHIBITED.** Prohibits a state agency from negotiating a contract with only one employee engaging in the negotiation.

Sec. 2262.065. **CONSISTENT PRICING BY CONTRACTORS.** Requires the commission to solicit a contract for the creation of a mechanism for tracking and comparing prices that state agencies pay for similar products or services. Authorizes a contractor awarded a contract, on behalf of the state, to renegotiate state agency contracts for products or services to obtain the best value for the state when the tracking and comparing mechanism shows a disparity in the price paid for similar products or services. Authorizes a contract under this section to allow the selected contractor to keep a percentage of the savings obtained in the renegotiated contracts. Requires a state agency to give a contractor selected under this section the information the contractor requires for the purpose of tracking and comparing prices that state agencies pay for similar products and services. Prohibits a contractor selected under this section from selling information it receives from a state agency under this section or otherwise making use of such information for a purpose other than performing its contract with the state.

Sec. 2262.066. **EXCEPTION TO RENEGOTIATION REQUIREMENT.** Authorizes a state agency to exclude a contract from the application of Section 2262.065 if it determines that renegotiation of the contract under that section will affect the state negatively. Requires the state agency to notify the commission, lieutenant governor, and speaker of the house of representatives regarding this determination and explain why renegotiation of the contract is contrary to the state's overall interest. Authorizes the commission to overrule the determination. Requires the commission to notify the lieutenant governor and speaker of the house of representatives if it overrules the determination. Requires the commission to adopt rules and procedures to document this process, including a requirement that the executive directors of the commission and the state agency making the determination formally approve the determination by signature or other appropriate method.

SECTION 1.06. Amends Subchapter C, Chapter 2262, Government Code, by adding Sections 2262.104 and 2262.105, as follows:

Sec. 2262.104. **UNIFORM DEFINITIONS AND FORMS.** Requires the Contract Advisory Team created to assist state agencies in improving contract management practices (team) to develop and publish a uniform set of definitions for use as applicable in state contracts and a uniform and automated set of forms for use in the different stages of the contracting process.

Sec. 2262.105. **FORMS FOR REPORTING CONTRACTOR PERFORMANCE.** Requires the team, as part of the uniform forms published under Section 2262.104, to develop a form for use by state agencies in reporting a contractor's performance under Section 2262.058.

SECTION 1.07. Amends Chapter 2262, Government Code, by adding Subchapters D, E, and F, as follows:

SUBCHAPTER D. CONTRACT PROVISIONS

Sec. 2262.151. **USE OF UNIFORM FORMS.** Authorizes a state agency to use the forms developed under Section 2262.104 as templates, guides, or samples for contracts entered into by the agency.

Sec. 2262.152. **CONTRACT TERMS RELATING TO NONCOMPLIANCE.** Requires the team to develop recommendations for contract terms regarding penalties for contractors who do not comply with a contract, including penalties for contractors who do not disclose conflicts of interest under Section 2262.201. Authorizes the team to develop recommended contract terms that are generally applicable to state contracts and terms that are applicable to important types of state contracts. Authorizes a state agency to include applicable recommended terms in a contract entered into by the agency.

Sec. 2262.153. **REQUIRED PROVISION RELATING TO SUBCONTRACTOR COMPLIANCE.** Requires each state agency contract to require that each contractor provide a list of all subcontractors and include a provision that holds the contractor responsible for the conduct of all subcontractors in complying with the contractor's contract with the state agency and requires each subcontractor to disclose all potential conflicts of interest to the state agency, according to guidelines developed under Section 2262.201(b), when the subcontractor contracts with or is otherwise hired by the contractor.

Sec. 2262.154. **REQUIRED CONTRACTOR DISCLOSURE STATEMENT; STATE AGENCY EMPLOYEES.** Requires the team to develop a standard contract provision requiring a contractor and subcontractor to disclose each employee who was employed by the state at any time during the two years before the date of the disclosure and is now employed by the contractor and each state employee who was employed by the contractor at any time during the year before the date of disclosure and is now employed by the state and who is materially involved in the development of the contract terms or the management of the contract or employed at the executive level with the contractor. Requires a state agency to include the provision in a contract entered into by the agency.

Sec. 2262.155. **REQUIRED CONTRACTOR DISCLOSURE STATEMENT; OUTSOURCING.** Requires each contract entered into by a state agency to include a provision requiring disclosure of any services materially necessary to fulfill the contract, including services performed by a subcontractor, that will be or are performed in a country other than the United States. Provides that this section does not apply to services that are incidental to fulfilling the contract. Requires the contract to include a provision allowing the state agency to terminate the contract and solicit a new contract if certain situations occur. Requires a state agency that decides not to solicit a new contract under circumstances in which the agency is authorized to do so under a contract provision required by this section to report that decision to the governor, the lieutenant governor, the speaker of the house of representatives, and the team.

[Reserves Sections 2262.157-2262.200 for expansion.]

SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

Sec. 2262.201. **CONTRACTOR CONFLICTS OF INTEREST.** Requires each contractor who responds to a state agency's contract solicitation to disclose in its response all potential conflicts of interest to the agency. Requires the team to develop guidelines to aid contractors and state agencies in identifying potential conflicts of interest.

Sec. 2262.202. **EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING CLASS.** Requires each executive director of a state agency to annually complete the ethics and contracting class developed under Section 2262.053. Provides that this section does not apply to a state agency that does not enter into any contracts.

[Reserves Sections 2262.203-2262.250 for expansion.]

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2262.251. **CONTRACT AMENDMENTS AND CHANGE ORDERS.** Provides that an amendment to a contract, including a change order, is subject to the same approval processes as the original contract. Prohibits a state agency from amending a contract unless the agency complies with the same approval processes for the amendment as required for the original contract and a contract manager for the agency states in writing why the amendment is necessary. Provides that this section does not require a new solicitation for a new contract.

Sec. 2262.252. **LARGE CHANGE IN CONTRACT VALUE.** Requires the state agency, if a proposed contract amendment or extension changes the monetary value of a contract by more than ten percent, to obtain review and approval from the team and the agency's executive director before the agency amends or extends the contract.

SECTION 1.08. Transfers Section 2262.003, Government Code, to Subchapter D, Chapter 2262, Government Code, as added by this Act, redesignates it as Section 2262.156, Government Code, and amends it as follows:

Sec. 2262.156. New heading: **REQUIRED PROVISION RELATING TO AUDITING.** Redesignated from existing Section 2262.003.

SECTION 1.09. (a) Makes application of Section 2262.064, Government Code, as added by this article, prospective.

(b) Makes application of Section 2262.201(a), Government Code, as added by this article, prospective.

SECTION 1.10. Requires the commission, not later than March 1, 2006, to develop the training program, including the ethics and contracting class, required by Section 2262.053, Government Code, as amended by this article, and Section 2262.0535, Government Code, as added by this article.

SECTION 1.11. Provides that a member of a governing body of a state agency is not required to complete the training developed under Section 2262.0535, Government Code, as added by this article, until September 1, 2007.

SECTION 1.12. Provides that an executive director of a state agency is not required to comply with Section 2262.202, Government Code, as added by this article, until September 1, 2007.

SECTION 1.13. Provides that a contract manager is not required to be certified under Chapter 2262, Government Code, as amended by this article, until September 1, 2007.

SECTION 1.14. (a) Requires the team, as soon as practicable and not later than March 1, 2006, to develop the forms, criteria, recommendations, and provisions required by this article, including Sections 2262.104, 2262.105, 2262.152, 2262.154, and 2262.201(b), Government Code, as added by this article.

(b) Provides that a state agency is not required to comply with Sections 2262.056-2262.063 and Sections 2262.153-2262.155, Government Code, as added by this article, until September 1, 2007. Authorizes a state agency to comply earlier if the forms, electronic requirements, database, or other items are available before that date.

ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCE DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

SECTION 2.01. Amends Subchapter C, Chapter 572, Government Code, by adding Section 572.060, as follows:

Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) Defines "legislative consultant," "legislative employee," "member of the governor's executive staff," "state agency legislative liaison," and "state agency procurement agent."

(b) Provides that this section applies to an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant.

(c) Provides that, for purposes of this section, a person to whom this section applies has a conflict of interest if the person has a personal financial or other interest in the subject matter of a governmental decision or action that compromises or has the appearance of compromising the person's professional judgment or integrity.

(d) Requires a person to whom this section applies who has a conflict of interest with respect to a governmental decision or action to disclose the conflict in writing delivered to the state officer or state agency employing or contracting with the person and abstain from further participation in the governmental decision or action.

(e) Provides that a person who violates this section is liable for a civil penalty of not less than \$500 and not more than the value of a monetary gain the person receives because of the governmental decision or action.

(f) Provides that Subsection (e) does not prohibit the imposition of a civil penalty under Chapter 571 or removal of an appointed officer under Section 572.058 for conduct that violates both this section and Section 572.058.

SECTION 2.02. Makes application of Section 572.060, Government Code, as added by this article, prospective.

ARTICLE 3. CHANGES RELATED TO STATE AUDIT CONTRACTS

SECTION 3.01. Amends Section 321.020(a), Government Code, to authorize a state agency or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, Texas Non-Profit Corporation Act (Article 1396-2.23B, V.T.C.S.), notwithstanding any other law, to employ a private auditor to audit the state agency or corporation only if the agency or corporation is authorized to contract with a private auditor, rather than to do so by law, through a delegation of authority from the state auditor.

SECTION 3.02. Amends Section 2113.102(a), Government Code, to prohibit a state agency from using appropriated money to contract with a person to audit the agency, rather than the financial records or accounts of the agency, except in accordance with Section 321.020, rather than Chapter 466, pertaining to the state lottery, Chapter 2306, pertaining to the Texas Department of Housing and Community Affairs, and Chapter 361, Transportation Code, pertaining to the Texas Turnpike Authority division of the Texas Department of Transportation.

SECTION 3.03. Makes application of Section 321.020(a), Government Code, as amended by this article, prospective.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date: September 1, 2005.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 9, 2005

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to contracting and ethics issues of state agencies; providing a civil penalty.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process not later than March 1, 2006.

In coordination with the State Auditor, Comptroller, Department of Information Resources, and the Health and Human Services Commission, the Texas Building and Procurement Commission (TBPC) would be required to develop a training program by March 1, 2006. TBPC would have to develop an abbreviated version of the training program for members of governing bodies of state agencies. All members of governing bodies would be required to complete at least one course of the training developed under this bill by September 1, 2007. The executive director of a state agency would have to complete the ethics and contracting course annually.

Each state agency would have to maintain contracts in a central location. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to TBPC. TBPC would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC would be required to solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

It is assumed that any additional duties or responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313
Department of Information Resources

LBB Staff: JOB, SD, JM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 9, 2005

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to contracting and ethics issues of state agencies; providing a civil penalty.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process not later than March 1, 2006.

In coordination with the State Auditor and the Texas Building and Procurement Commission (TBPC), the University of Texas at Austin (UT-Austin) would be required to develop a training program by March 1, 2006. UT-Austin would have to develop an abbreviated version of the training program for members of governing bodies of state agencies. All members of governing bodies would be required to complete at least one course of the training developed under this bill by September 1, 2007. The executive director of a state agency would have to complete the ethics and contracting course annually.

Each state agency would have to maintain contracts in a central location and provide the Department of Information Resources (DIR) with electronic copies of contracts. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to DIR. DIR would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC would be required to solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

It is assumed that any additional duties or responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313 Department of Information Resources

LBB Staff: JOB, SD, JM

ADOPTED

as amended

MAY 13 2005

29-2
Deputy Drew
Secretary of the Senate

By: Zaffirini, et al.

S.B. No. 12

Substitute the following for S.B. No. 12:

By: *Zaffirini*

C.S.S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to contracting and ethics issues of ~~certain governmental entities~~ *state agencies*;
providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Section 2262.001, Government Code, is amended
by amending Subdivision (3) and adding Subdivision (3-a) to read as
follows:

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties
for the state agency[, ~~as determined by the agency in consultation
with the state auditor~~].

(3-a) "Executive director" means the administrative
head of a state agency.

SECTION 1.02. Subchapter A, Chapter 2262, Government Code,
is amended by adding Section 2262.0015 to read as follows:

Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. The
commission by rule shall establish threshold requirements that
exclude small or routine contracts, including purchase orders, from
the application of this chapter.

SECTION 1.03. The heading to Section 2262.053, Government
Code, is amended to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS. /

SECTION 1.04. Section 2262.053, Government Code, is amended by amending Subsections (a) and (d) and adding Subsections (e) and (f) to read as follows:

(a) In coordination with the comptroller, Department of Information Resources, ~~[and] state auditor, and Health and Human Services Commission~~, the commission ^{or a private vendor selected by the commission} shall develop ~~[or administer]~~ a training program for contract managers.

(d) The commission ~~[Texas Building and Procurement Commission]~~ shall administer the training program under this section.

(e) The commission shall certify contract managers who have completed the contract management training required under this section and keep a list of those contract managers.

(f) The program developed under this section must include a separate class on ethics and contracting.

SECTION 1.05. Subchapter B, Chapter 2262, Government Code, is amended by adding Section 2262.0535 and Sections 2262.055 through 2262.060⁷ to read as follows:

Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The commission ^{or a private vendor selected by the commission} shall adapt the program developed under Section 2262.053 to develop an abbreviated program for training the members of the governing bodies of state agencies. The training may be provided together with other required training for members of state agency governing bodies.

(b) All members of the governing body of a state agency ^{2/3} shall complete at least one course of the training developed under this section. This subsection does not apply to a state agency that

1 does not enter into any contracts.

2 Sec. 2262.055. FEES FOR TRAINING. The commission shall set
 3 and collect a fee from state agencies that receive training under
 4 this subchapter in an amount that recovers the commission's costs
 5 for the training.

6 Sec. 2262.056. STATE AGENCY REPOSITORY. Each state agency
 7 shall maintain in a central location all contracts for that agency.

8 Sec. 2262.057. CONTRACTS DATABASE. (a) The commission
 9 shall store in a database information on contracts provided by
 10 state agencies under this section.

11 (b) Each state agency shall periodically provide to the
 12 commission information regarding contracts entered into by the
 13 agency, including:

- 14 (1) the name of the contractor;
- 15 (2) the contract value;
- 16 (3) the beginning date and end date of the contract;
- 17 (4) a description of any amendments made to the

18 contract;

- 19 (5) ^{cumulative} payments ~~made or outstanding~~ ^{and encumbrances} under the contract;
- 20 (6) key contract terms that ~~have not yet been~~ ^{are out of compliance in terms of timeliness}
- 21 ~~performed; and~~ ^{standards; and}

22 (7) any other information that the commission
 23 considers necessary for the database created under this section.

24 (c) The commission shall set appropriate criteria to ^{3/4}
 25 determine when and what information should be updated.

26 (d) The commission shall make the database available to
 27 state agencies and searchable by:

1 (1) contractor;
2 (2) contract value;
3 (3) state agency; and
4 (4) date, including both the beginning date and the
5 end date of the contract.

6 Sec. 2262.058. REPORTING CONTRACTOR PERFORMANCE.

7 (a) After a contract is completed or otherwise terminated, each
8 state agency shall review the contractor's performance under the
9 contract.

10 (b) Using the forms developed by the team under Sections
11 2262.104 and 2262.105, the state agency shall report to the
12 commission on the results of the review regarding the contractor's
13 performance under the contract.

14 Sec. 2262.059. CONTRACTOR PERFORMANCE DATABASE. (a) The
15 commission shall store in a database contractor performance reviews
16 as provided by this section.

17 (b) The commission shall evaluate the contractor's
18 performance based on the information reported under Section
19 2262.058 and criteria established by the commission.

20 ^d
21 (d) The commission shall develop a database that
22 incorporates the performance reviews and aggregates the reviews for
23 each contractor.

24 ^e
25 (e) A state agency may use the performance review database
26 to determine whether to award a contract to a contractor reviewed in
27 the database.

28 Sec. 2262.060. EXCLUDING CONTRACTOR FROM SOLICITATION
29 PROCESS. Based on its own contractor performance reviews and on

1 information in the database developed under Section 2262.059, a
2 state agency may exclude a contractor from the solicitation process
3 for a contract if the agency determines the contractor has
4 performed poorly on a previous state contract without regard to
5 whether the contractor has been barred under Section 2155.077.

6 Sec. 2262.061. PERFORMANCE MEASURES; REPORTS. (a) Each
7 state agency shall develop a plan for incorporating performance
8 measures into all contracts entered into by the agency.

9 (b) This includes ensuring that performance measures are
10 written into each contract prior to execution.

11 (c) Not later than March 1 of each year, each state agency
12 shall report to the team, governor, lieutenant governor, and
13 speaker of the house of representatives regarding performance
14 measures in the agency's contracts. The report must describe the
15 agency's efforts to include performance-based provisions in the
16 agency's contracts.

17 (d) The state agency shall make the report accessible to the
18 public on the agency's website.

19 Sec. 2262.062. CONTRACT MANAGERS. (a) Each state agency
20 that enters into contracts other than interagency contracts shall
21 establish a career ladder program for contract management in the 5/6
22 agency.

23 (b) An employee hired as a contract manager shall oversee
24 and may, as appropriate, engage in procurement planning, contract
25 solicitation, contract formation, price establishment, and other
26 contract activities.

27 (c) Each state agency shall determine, in consultation with

1 the state auditor, the amount and significance of contract
 2 management duties sufficient for an employee to be considered a
 3 contract manager under this chapter.

4 Sec. 2262.063. APPROVAL OF CONTRACTS. (a) Each state
 5 agency shall establish formal guidelines regarding who may approve
 6 a contract for the agency.

Insert
F.A.#5
(3) → (b) The guidelines must require that at least two persons
 8 approve the contract, including a supervisor and a contract manager
 9 certified under Section 2262.053. This subsection applies both to
 10 contracts that agency staff is authorized to enter into without
 11 further approval by the governing body and to contracts that must be
 12 approved by the governing body.

13 (c) For state agency contracts valued in excess of \$1
 14 million the agency executive director must authorize a contract
 15 amendment in writing.

16 (d) Each state agency shall annually report to the
 17 commission a list of each person authorized to approve contracts at
 18 the agency. The list must include the person's name, position, and
 19 supervisory responsibility, if any.

20 Sec. 2262.064. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE
 21 PROHIBITED. A state agency may not negotiate a contract with only
 22 one employee engaging in the negotiation.

23 Sec. 2262.065. CONSISTENT PRICING BY CONTRACTORS. (a) The
 24 commission ^{may} solicit a contract for the creation of a mechanism
 25 for tracking and comparing prices that state agencies pay for
 26 similar products or services.

27 (b) On behalf of the state, a contractor awarded a contract

1 under Subsection (a) may renegotiate state agency contracts for
 2 products or services to obtain the best value for the state when the
 3 tracking and comparing mechanism shows a disparity in the price
 4 paid for similar products or services. A contract under Subsection
 5 (a) may allow the selected contractor to keep a percentage of the
 6 savings obtained in the renegotiated contracts.

7 (c) A state agency shall give a contractor selected under
 8 Subsection (a) the information the contractor requires for the
 9 purpose of tracking and comparing prices that state agencies pay
 10 for similar products and services.

11 (d) A contractor selected under Subsection (a) may not sell
 12 information it receives under Subsection (c) or otherwise make use
 13 of the information for a purpose other than performing its contract
 14 with the state.

15 Sec. 2262.066. EXCEPTION TO RENEGOTIATION REQUIREMENT.

16 (a) A state agency may exclude a contract from the application of
 17 Section 2262.065 if it determines that renegotiation of the
 18 contract under that section will affect the state negatively. The
 19 state agency must notify the commission, lieutenant governor, and
 20 speaker of the house of representatives regarding this
 21 determination and explain why renegotiation of the contract is
 22 contrary to the state's overall interest.

23 (b) The commission may overrule the determination. The
 24 commission must notify the lieutenant governor and speaker of the
 25 house of representatives if it overrules the determination.

26 (b) The commission shall adopt rules and procedures to
 27 document this process, including a requirement that the executive

1 directors of the commission and the state agency making the
 2 determination formally approve the determination by signature or
 3 other appropriate method.

4 *Insert* → SECTION 1.06. Subchapter C, Chapter 2262, Government Code, / 7/9
 5 is amended by adding Sections 2262.104 and 2262.105 to read as
 6 follows:

7 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The
 8 team shall develop and publish a uniform set of definitions for use /
 9 as applicable in state contracts.

10 (b) The team shall develop and publish a uniform and
 11 automated set of forms that a state agency may use in the different
 12 stages of the contracting process.

13 Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.
 14 As part of the uniform forms published under Section 2262.104, the
 15 team shall develop forms for use by state agencies in reporting a
 16 contractor's performance under Section 2262.058.

17 SECTION 1.07. Chapter 2262, Government Code, is amended by
 18 adding Subchapters D, E, and F to read as follows:

19 SUBCHAPTER D. CONTRACT PROVISIONS

20 Sec. 2262.151. USE OF UNIFORM FORMS. A state agency may use
 21 the forms developed under Section 2262.104 as templates, guides, or
 22 samples for contracts entered into by the agency.

23 Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE.
 24 (a) The team shall develop recommendations for contract terms
 25 regarding penalties for contractors who do not comply with a
 26 contract, including penalties for contractors who do not disclose
 27 conflicts of interest under Section 2262.201. The team may develop

1 recommended contract terms that are generally applicable to state
2 contracts and terms that are applicable to important types of state
3 contracts.

4 (b) A state agency may include applicable recommended terms / 7/10
5 in a contract entered into by the agency.

6 Sec. 2262.153. REQUIRED PROVISION RELATING TO
7 SUBCONTRACTOR COMPLIANCE. Each state agency contract must require
8 that each contractor provide a list of all subcontractors and
9 include a provision that:

10 (1) holds the contractor responsible for the conduct
11 of all subcontractors in complying with the contractor's contract
12 with the state agency; and

13 (2) requires each subcontractor to disclose all
14 potential conflicts of interest to the state agency, according to
15 guidelines developed under Section 2262.201(b), when the
16 subcontractor contracts with or is otherwise hired by the
17 contractor.

18 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
19 STATE AGENCY EMPLOYEES. (a) The team shall develop a standard
20 contract provision requiring a contractor and subcontractor to
21 disclose each employee:

22 (1) who was employed by:

23 (A) the state at any time during the two years
24 before the date of the disclosure and is now employed by the
25 contractor; and

26 (B) the contractor at any time during the year
27 before the date of the disclosure and is now employed by the state;

1 and

2 (2) who is:

3 (A) materially involved in the development of the
4 contract terms or the management of the contract; or^{10/}₁₁

5 (B) employed at the executive level with the
6 contractor.

7 (b) A state agency shall include the provision in a contract
8 entered into by the agency.

9 Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
10 OUTSOURCING. (a) Each contract entered into by a state agency
11 must include a provision requiring disclosure of any services
12 materially necessary to fulfill the contract, including services
13 performed by a subcontractor, that will be or are performed in a
14 country other than the United States. This section does not apply
15 to services that are incidental to fulfilling the contract.

16 (b) The contract must include a provision allowing the state
17 agency to terminate the contract and solicit a new contract if:

18 (1) the contractor or a subcontractor of the
19 contractor performs a service materially necessary to fulfill the
20 contract in a country other than the United States; and

21 (2) the contractor did not disclose in the contract at
22 the time the contract was originally entered into that the service
23 would be performed in a country other than the United States.

24 (c) A state agency that decides not to solicit a new
25 contract under circumstances in which the agency is authorized to
26 do so under a contract provision required by Subsection (b) shall
27 report this decision to:

- 1 (1) the governor;
2 (2) the lieutenant governor;
3 (3) the speaker of the house of representatives; and
 (4) the team. ^{11/12}

Insert
FA #3 → [Sections 2262.157-2262.200 reserved for expansion]
(1) ⁵

6 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

7 Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each
8 contractor who responds to a state agency's contract solicitation
9 shall disclose in its response all potential conflicts of interest
10 to the agency.

11 (b) The team shall develop guidelines to aid contractors and
12 state agencies in identifying potential conflicts of interest.

13 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING
14 CLASS. Each executive director of a state agency shall annually
15 complete the ethics and contracting class developed under Section
16 2262.053. This section does not apply to a state agency that does
17 not enter into any contracts.

18 [Sections 2262.203-2262.250 reserved for expansion] ^{12/13}

19 SUBCHAPTER F. CHANGES TO CONTRACTS

20 Sec. 2262.251. CONTRACT AMENDMENTS AND CHANGE ORDERS.

21 (a) An amendment to a contract, including a change order, is
22 subject to the same approval processes as the original contract.

23 (b) A state agency may not amend a contract unless:

24 (1) the agency complies with the same approval
25 processes for the amendment as required for the original contract;
26 and

27 (2) a contract manager for the agency states in

1 writing why the amendment is necessary.

2 (c) This section does not require a new solicitation for a
3 new contract.

4 Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. ^(a) If a
5 proposed contract amendment or extension changes the monetary value
6 of a contract by more than 10 percent, the state agency must obtain
7 review and approval from the team and the agency's executive
8 director before the agency amends or extends the contract.

*Insert
F.A.H.S.
(1)* 9 SECTION 1.08. Section 2262.003, Government Code, is
10 transferred to Subchapter D, Chapter 2262, Government Code, as
11 added by this Act, is redesignated as Section 2262.156, Government
12 Code, and is amended to read as follows:

13 Sec. 2262.156 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION
14 RELATING TO AUDITING. (a) Each state agency shall include in each
15 of its contracts a term that provides that: ^{13/14}

16 (1) the state auditor may conduct an audit or
17 investigation of any entity receiving funds from the state directly
18 under the contract or indirectly through a subcontract under the
19 contract; and

20 (2) acceptance of funds directly under the contract or
21 indirectly through a subcontract under the contract acts as
22 acceptance of the authority of the state auditor, under the
23 direction of the legislative audit committee, to conduct an audit
24 or investigation in connection with those funds.

25 (b) The state auditor shall provide assistance to a state
26 agency in developing the contract provisions.

27 SECTION 1.09. (a) Section ⁶2262.064/₁ ^{and 2262.067} Government Code, as

1 added by this article, ^yapplies only to a contract for which a state
2 agency first advertises or otherwise solicits bids, proposals,
3 offers, or qualifications on or after the effective date of this
4 Act.

5 (b) Subsection (a), Section 2262.201, Government Code, as
6 added by this article, applies only in relation to a contract for
7 which a state agency first solicits bids, proposals, offers, or
8 qualifications on or after the date that the Contract Advisory
9 Team's guidelines regarding potential conflicts of interest take
10 effect.

11 SECTION 1.10. Not later than March 1, 2006, the Texas
12 Building and Procurement Commission shall develop the training
13 program, including the ethics and contracting class, required by
14 Section 2262.053, Government Code, as amended by this article, and
15 Section 2262.0535, Government Code, as added by this article.^{14/15}

16 SECTION 1.11. A member of a governing body of a state agency
17 is not required to complete the training developed under Section
18 2262.0535, Government Code, as added by this article, until
19 September 1, 2007.

20 SECTION 1.12. An executive director of a state agency is not
21 required to comply with Section 2262.202, Government Code, as added
22 by this article, until September 1, 2007.

23 SECTION 1.13. A contract manager is not required to be
24 certified under Chapter 2262, Government Code, as amended by this
25 article, until September 1, 2007.

26 SECTION 1.14. (a) As soon as practicable, and not later
27 than March 1, 2006, the Contract Advisory Team shall develop the

forms, criteria, recommendations, and provisions required by this article, including Sections 2262.104, 2262.105, 2262.152, and 2262.154 and Subsection (b), Section 2262.201, Government Code, as added by this article.

(b) A state agency is not required to comply with Sections 2262.056 through 2262.063 and Sections 2262.153, 2262.154, ~~and~~ ^{and 2262.156,} 2262.155, Government Code, as added by this article, until September 1, 2007. A state agency may comply earlier if the forms, electronic requirements, database, or other items are available before that date.

ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCIAL DISCLOSURE,
STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

SECTION 2.01. Subchapter C, Chapter 572, Government Code, is amended by adding Section 572.060 to read as follows:

Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR ^{15/16}
EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) In this
section:

(1) "Legislative consultant" means:

(A) a person providing services under contract as
a consultant to the senate, the house of representatives, or a
member or committee of either house; or

(B) a person providing services under contract as
a consultant to a state agency in connection with legislation or
communications with members of the legislature or legislative
employees.

(2) "Legislative employee" means a person employed by:

(A) the senate, the house of representatives, or

1 a committee of either house; or

2 (B) a member of the legislature acting in the
3 member's official capacity.

4 (3) "Member of the governor's executive staff" means a
5 person employed by the governor acting in the governor's official
6 capacity whose regular job duties include:

7 (A) the formulation of policy or testifying
8 before and meeting with members of the legislature; or

9 (B) supervising other employees in the
10 governor's office whose regular job duties include those described
11 by Paragraph (A).

12 (4) "State agency legislative liaison" means an
13 employee of a state agency who serves as a legislative liaison or
14 government affairs officer or acts in a similar capacity or whose
15 regular job duties include testifying before and meeting with 16/17
16 members of the legislature.

17 (5) "State agency procurement agent" means an employee
18 of a state agency whose regular job duties include soliciting,
19 evaluating, or awarding bids, proposals, or contracts for the
20 procurement by the state agency of property or services.

21 (b) This section applies to an appointed officer, executive
22 head of a state agency, member of the governor's executive staff,
23 legislative employee, state agency legislative liaison, state
24 agency procurement agent, or legislative consultant.

25 (c) For purposes of this section, a person to whom this
26 section applies has a conflict of interest if the person has a
27 personal financial or other interest in the subject matter of a

1 governmental decision or action that compromises or has the
2 appearance of compromising the person's professional judgment or
3 integrity.

4 (d) A person to whom this section applies who has a conflict
5 of interest with respect to a governmental decision or action
6 shall:

7 (1) disclose the conflict in writing delivered to the
8 state officer or state agency employing or contracting with the
9 person; and

10 (2) abstain from further participation in the
11 governmental decision or action.

12 (e) A person who violates this section is liable for a civil
13 penalty of not less than \$500 and not more than the value of a
14 monetary gain the person receives because of the governmental
15 decision or action. ^{17/18}

16 (f) Subsection (e) does not prohibit:

17 (1) the imposition of a civil penalty under Chapter
18 571; or

19 (2) removal of an appointed officer under Section
20 572.058 for conduct that violates both this section and Section
21 572.058.

22 SECTION 2.02. Section 572.060, Government Code, as added by
23 this article, applies only to participation in a governmental
24 decision made or action taken on or after September 1, 2005.
25 Participation in a governmental decision made or action taken
26 before September 1, 2005, is governed by the law in effect on the
27 date the decision is made or the action is taken, and the former law

1 is continued in effect for that purpose.

2 ARTICLE 3. CHANGES RELATED TO STATE AUDIT CONTRACTS

3 SECTION 3.01. Subsection (a), Section 321.020, Government
4 Code, is amended to read as follows:

5 (a) Notwithstanding any other law, a state agency, or a
6 corporation that is dedicated to the benefit of a state agency and
7 that meets the criteria specified by Section B, Article 2.23B,
8 Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's
9 Texas Civil Statutes), may employ a private auditor to audit the
10 state agency or corporation only if:

11 (1) the agency or corporation is authorized to
12 contract with a private auditor ~~[do so by law or]~~ through a
13 delegation of authority from the state auditor;

14 (2) the scope of the proposed audit has been submitted
15 to the state auditor for review and comment; and ^{18/19}

16 (3) the services of the private auditor are procured
17 through a competitive selection process in a manner allowed by law.

18 SECTION 3.02. Subsection (a), Section 2113.102, Government
19 Code, is amended to read as follows:

20 (a) A state agency may not use appropriated money to
21 contract with a person to audit ~~[the financial records or accounts~~
22 ~~of]~~ the agency except:

23 (1) as provided by[+]

24 ~~[+1+]~~ Subsections (b), (c), and (d); and

25 (2) in accordance with Section 321.020 ~~[Chapter 466,~~
26 ~~pertaining to the state lottery,~~

27 ~~[(3) Chapter 2306, pertaining to the Texas Department~~

1 ~~of Housing and Community Affairs, and~~

2 ~~[(4) Chapter 361, Transportation Code, pertaining to~~
3 ~~the Texas Turnpike Authority division of the Texas Department of~~
4 ~~Transportation].~~

5 SECTION 3.03. Subsection (a), Section 321.020, Government
6 Code, as amended by this article, applies only to a contract that is
7 entered into, amended, extended, or renewed on or after the
8 effective date of this Act.

Insert
F.A.#4 → ARTICLE ⁵~~4~~. EFFECTIVE DATE

10 SECTION ⁵~~4~~.01. This Act takes effect September 1, 2005.

ADOPTED

MAY 13 2005

Atay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Willen*

Amend C.S.S.B. No. 12 (Senate committee printing) as follows:

✓(1) In Section 1.04 of the bill, in amended Subsection (a),
Section 2262.053, Government Code (page ²1, line ⁶37), strike
"commission" and substitute "commission or a private vendor
selected by the commission".

✓(2) In Section 1.05 of the bill, in added Subsection (a),
Section 2262.0535, Government Code (page ²1, line ²⁰51), strike
"commission" and substitute "commission or a private vendor
selected by the commission".

ADOPTED

MAY 13 2005

Lotay Daw
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: Todd Stegen

Amend C.S.S.B. No. 12 (Senate committee printing) as follows:

(1) In the recital to Section 1.05 of the bill (page ²1, line ¹⁸49), strike "2262.066" and substitute "2262.067".

(2) In Section 1.05 of the bill, in amended Subchapter B, Chapter 2262, Government Code (page 3, between lines 64 and 65), insert added Section 2262.067 to read as follows:

*Exl
Insert
F.A.#2
(2)
at
p.8, l.4*

Sec. 2262.067. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN CONTRACTS. (a) If a state agency determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of \$10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions, the agency shall create an optimized model for the identified functions or services to determine how and at what cost the agency could most efficiently provide the functions or services.

(b) The model must show consideration of all relevant factors, including:

- (1) best practices in Texas and other states;
- (2) available technology;
- (3) access to benefits and services for clients; and
- (4) program integrity.

(c) An agency that develops an optimized model under this section shall use it as the basis for cost comparison when deciding whether to outsource the identified functions or services.

(d) A model developed under this section is confidential and is not subject to disclosure under Chapter 552 until a final determination has been made to award the contract for which the model was developed.

(3) In Section 1.09(a) of the bill (page ¹²5, line ²⁷58), strike

ADOPTED

MAY 13 2005

FLOOR AMENDMENT NO. 3

BY: Darriente

Atty. Gen.
Secretary of the Senate

Amend C.S.S.B. No. 12 (Senate committee printing) as follows:

(1) In Section 1.07 of the bill, in added Subchapter D, Chapter 2262, Government Code (page 5, between lines 8 and 9), insert added Section 2262.15⁶ to read as follows:

Sec. 2262.15⁶. HIRING PREFERENCE PROVISION FOR CERTAIN LARGE CONTRACTS. If a state agency determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of \$10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions, the contract or contract amendment must contain a provision that requires the contractor to give preference in hiring to former employees of a state agency:

(1) whose employment is terminated because of the contract or contract amendment; and

(2) who satisfy the contractor's hiring criteria for that position.

(2) In Section 1.14(b) of the bill (page 6, lines 22-23), strike "and 2262.155" and substitute "2262.155, and 2262.15⁶".

ADOPTED

MAY 13 2005

Atay Dew
Secretary of the Senate

FLOOR AMENDMENT NO. 4

BY: *Shepley*

1 Amend C.S.S.B. No. 12 (committee printing) by adding the
2 following appropriately numbered ARTICLE to the bill and
3 renumbering the subsequent ARTICLES accordingly:

ARTICLE 4³. PREFERENCE IN GOVERNMENTAL PURCHASING DECISIONS FOR
VENDORS THAT PROVIDE HEALTH BENEFITS TO EMPLOYEES

SECTION 4.01. ^{Subsection (b),} Section 44.031~~(b)~~, Education Code, is
amended to read as follows:

(b) Except as provided by this subchapter, in determining to
whom to award a contract, the district may consider:

- (1) the purchase price; ^{19/20}
- (2) the reputation of the vendor and of the vendor's
goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the
district's needs;
- (5) the vendor's past relationship with the district;
- (6) the impact on the ability of the district to comply
with laws and rules relating to historically underutilized
businesses;
- (7) the total long-term cost to the district to
acquire the vendor's goods or services; ~~and~~
- (8) whether the vendor provides health benefits
coverage to employees; and
- (9) any other relevant factor specifically listed in
the request for bids or proposals.

SECTION 4.02. Subchapter B, Chapter 44, Education Code, is
amended by adding Section 44.0421 to read as follows:

Sec. 44.0421. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
BENEFITS COVERAGE. (a) A district procuring goods or services

#4

1 shall give preference to goods or services of a vendor that
2 demonstrates that the vendor provides health benefits coverage that
3 is at least equivalent to a standard health benefit plan offered in
4 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
5 Insurance Code, to each of the vendor's full-time employees and
6 dependents of full-time employees if:

7 (1) the goods or services meet district specifications
8 regarding quantity and quality; and ²¹

9 (2) the cost of the goods or services does not exceed
10 the ultimate cost to the district that would result if the district
11 procured similar goods or services from a vendor that does not
12 demonstrate that the vendor provides health benefits coverage to
13 the vendor's employees and employees' dependents.

14 (b) A district may not give preference under this section to
15 a vendor that provides health benefits coverage to its employees
16 over a vendor with 50 or fewer employees that does not provide
17 health benefits coverage to its employees and employees'
18 dependents.

19 SECTION ^{Subsection (b),} 4.03. Section 51.9335-~~b~~, Education Code, is
20 amended to read as follows:

21 (b) In determining what is the best value to an institution
22 of higher education, the institution shall consider:

23 (1) the purchase price;

24 (2) the reputation of the vendor and of the vendor's
25 goods or services;

26 (3) the quality of the vendor's goods or services;

27 (4) the extent to which the goods or services meet the
28 institution's needs;

29 (5) the vendor's past relationship with the
30 institution;

31 (6) the impact on the ability of the institution to

1 comply with laws and rules relating to historically underutilized
2 businesses and to the procurement of goods and services from
3 persons with disabilities;

4 (7) the total long-term cost to the institution of ^{21/}₂₂
5 acquiring the vendor's goods or services;

6 (8) any other relevant factor that a private business
7 entity would consider in selecting a vendor; ~~and~~

8 (9) the use of material in construction or repair to
9 real property that is not proprietary to a single vendor unless the
10 institution provides written justification in the request for bids
11 for use of the unique material specified; and

12 (10) whether the vendor provides health benefits
13 coverage to employees.

14 SECTION 4.04. Subchapter Z, Chapter 51, Education Code, is
15 amended by adding Section 51.9336 to read as follows:

16 Sec. 51.9336. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
17 BENEFITS COVERAGE. (a) In this section, "institution of higher
18 education" has the meaning assigned by Section 61.003.

19 (b) An institution of higher education procuring goods or
20 services shall give preference to goods or services of a vendor that
21 demonstrates that the vendor provides health benefits coverage that
22 is at least equivalent to a standard health benefit plan offered in
23 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
24 Insurance Code, to each of the vendor's full-time employees and
25 dependents of full-time employees if:

26 (1) the goods or services meet institution
27 specifications regarding quantity and quality; and

28 (2) the cost of the goods or services does not exceed
29 the ultimate cost to the institution that would result if the
30 institution procured similar goods or services from a vendor that
31 does not demonstrate that the vendor provides health benefits ^{21/}₂₂

1 coverage to the vendor's employees and employees' dependents.

2 (c) An institution of higher education may not give
3 preference under this section to a vendor that provides health
4 benefits coverage to its employees over a vendor with 50 or fewer
5 employees that does not provide health benefits coverage to its
6 employees and employees' dependents.

7 SECTION 4.05. ^{Subsection (b),} Section 73.115(~~h~~), Education Code, is
8 amended to read as follows:

9 (b) In determining what is the best value to the
10 institution, the institution shall consider:

- 11 (1) the purchase price;
- 12 (2) the reputation of the vendor and of the vendor's
13 goods or services;
- 14 (3) the quality of the vendor's goods or services;
- 15 (4) the extent to which the goods or services meet the
16 institution's needs;
- 17 (5) the vendor's past relationship with the
18 institution;
- 19 (6) the impact on the ability of the institution to
20 comply with laws and rules relating to historically underutilized
21 businesses;
- 22 (7) the total long-term cost to the institution of
23 acquiring the vendor's goods or services; [~~and~~]
- 24 (8) as provided by Section 51.9336, whether the vendor
25 provides health benefits coverage to employees; and

26 (9) any other relevant factor that a private business
27 entity would consider in selecting a vendor. ^{23/24}

28 SECTION 4.06. ^{Subsection (b),} Section 74.008(~~h~~), Education Code, is
29 amended to read as follows:

30 (b) In determining what is the best value to the medical
31 branch, the medical branch shall consider:

- 1 (1) the purchase price;
- 2 (2) the reputation of the vendor and of the vendor's
- 3 goods or services;
- 4 (3) the quality of the vendor's goods or services;
- 5 (4) the extent to which the goods or services meet the
- 6 medical branch's needs;
- 7 (5) the vendor's past relationship with the medical
- 8 branch;
- 9 (6) the impact on the ability of the medical branch to
- 10 comply with laws and rules relating to historically underutilized
- 11 businesses;
- 12 (7) the total long-term cost to the medical branch of
- 13 acquiring the vendor's goods or services; ~~and~~
- 14 (8) as provided by Section 51.9336, whether the vendor
- 15 provides health benefits coverage to employees; and
- 16 (9) any other relevant factor that a private business
- 17 entity would consider in selecting a vendor.

18 SECTION 4.07. ^{Subsection (b),} Section 2155.074~~(b)~~, Government Code, is
19 amended to read as follows:

20 (b) In determining the best value for the state, the
21 purchase price and whether the goods or services meet
22 specifications are the most important considerations. However, the
23 commission or other state agency may, subject to Subsection (c) and ^{24/25}
24 Section 2155.075, consider other relevant factors, including:

- 25 (1) installation costs;
- 26 (2) life cycle costs;
- 27 (3) the quality and reliability of the goods and
- 28 services;
- 29 (4) the delivery terms;
- 30 (5) indicators of probable vendor performance under
- 31 the contract such as past vendor performance, the vendor's

1 financial resources and ability to perform, the vendor's experience
2 or demonstrated capability and responsibility, and the vendor's
3 ability to provide reliable maintenance agreements and support;

4 (6) the cost of any employee training associated with
5 a purchase;

6 (7) the effect of a purchase on agency productivity;

7 (8) the vendor's anticipated economic impact to the
8 state or a subdivision of the state, including potential tax
9 revenue and employment;

10 (9) whether the vendor provides health benefits
11 coverage to employees; and

12 (10) [~~49~~] other factors relevant to determining the
13 best value for the state in the context of a particular purchase.

14 SECTION 4.08. Subchapter H, Chapter 2155, Government Code,
15 is amended by adding Section 2155.452 to read as follows:

16 Sec. 2155.452. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
17 BENEFITS COVERAGE. (a) The commission and all state agencies
18 procuring goods or services shall give preference to goods or
19 services of a vendor that demonstrates that the vendor provides
20 health benefits coverage that is at least equivalent to a standard
21 health benefit plan offered in accordance with Article 3.80,
22 Article 20A.09N, or Chapter 1507, Insurance Code, to each of the
23 vendor's full-time employees and dependents of full-time employees
24 if:

25 (1) the goods or services meet state specifications
26 regarding quantity and quality; and

27 (2) the cost of the goods or services does not exceed
28 the ultimate cost to the commission or state agency that would
29 result if the commission or state agency procured similar goods or
30 services from a vendor that does not demonstrate that the vendor
31 provides health benefits coverage to the vendor's employees and

1 employees' dependents.

2 (b) The commission or a state agency may not give preference
3 under this section to a vendor that provides health benefits
4 coverage to its employees over a vendor with 50 or fewer employees
5 that does not provide health benefits coverage to its employees and
6 employees' dependents.

7 SECTION 4.09. ^{Subsection (b)} Section 252.043~~4~~¹, Local Government Code,
8 is amended to read as follows:

9 (b) In determining the best value for the municipality, the
10 municipality may consider:

- 11 (1) the purchase price;
- 12 (2) the reputation of the bidder and of the bidder's
13 goods or services;
- 14 (3) the quality of the bidder's goods or services;
- 15 (4) the extent to which the goods or services meet the ²⁴/₂₇
16 municipality's needs;
- 17 (5) the bidder's past relationship with the
18 municipality;
- 19 (6) the impact on the ability of the municipality to
20 comply with laws and rules relating to contracting with
21 historically underutilized businesses and nonprofit organizations
22 employing persons with disabilities;
- 23 (7) the total long-term cost to the municipality to
24 acquire the bidder's goods or services; ~~and~~
- 25 (8) whether the bidder provides health benefits
26 coverage to employees; and
- 27 (9) any relevant criteria specifically listed in the
28 request for bids or proposals.

29 SECTION 4.10. Subchapter C, Chapter 252, Local Government
30 Code, is amended by adding Section 252.0431 to read as follows:

31 Sec. 252.0431. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH

1 BENEFITS COVERAGE. (a) A municipality procuring goods or services
2 shall give preference to goods or services of a vendor that
3 demonstrates that the vendor provides health benefits coverage that
4 is at least equivalent to a standard health benefit plan offered in
5 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
6 Insurance Code, to each of the vendor's full-time employees and
7 dependents of full-time employees if:

8 (1) the goods or services meet municipality
9 specifications regarding quantity and quality; and

10 (2) the cost of the goods or services does not exceed
11 the ultimate cost to the municipality that would result if the²⁷
12 municipality procured similar goods or services from a vendor that
13 does not demonstrate that the vendor provides health benefits
14 coverage to the vendor's employees and employees' dependents.

15 (b) A municipality may not give preference under this
16 section to a vendor that provides health benefits coverage to its
17 employees over a vendor with 50 or fewer employees that does not
18 provide health benefits coverage to its employees and employees'
19 dependents.

20 SECTION 4.11. Subchapter C, Chapter 262, Local Government
21 Code, is amended by adding Section 262.0271 to read as follows:

22 Sec. 262.0271. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
23 BENEFITS COVERAGE. (a) The commissioners court of a county
24 procuring goods or services shall give preference to goods or
25 services of a vendor that demonstrates that the vendor provides
26 health benefits coverage that is at least equivalent to a standard
27 health benefit plan offered in accordance with Article 3.80,
28 Article 20A.09N, or Chapter 1507, Insurance Code, to each of the
29 vendor's full-time employees and dependents of full-time employees
30 if:

31 (1) the goods or services meet county specifications

1 regarding quantity and quality; and

2 (2) the cost of the goods or services does not exceed
3 the ultimate cost to the county that would result if the
4 commissioners court procured similar goods or services from a
5 vendor that does not demonstrate that the vendor provides health
6 benefits coverage to the vendor's employees and employees'
7 dependents. *W/21*

8 (b) A commissioners court may not give preference under this
9 section to a vendor that provides health benefits coverage to its
10 employees over a vendor with 50 or fewer employees that does not
11 provide health benefits coverage to its employees and employees'
12 dependents.

13 SECTION 4.12. Subchapter C, Chapter 271, Local Government
14 Code, is amended by adding Section 271.0571 to read as follows:

15 Sec. 271.0571. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
16 BENEFITS COVERAGE. (a) A municipality or county procuring goods or
17 services shall give preference to goods or services of a vendor that
18 demonstrates that the vendor provides health benefits coverage that
19 is at least equivalent to a standard health benefit plan offered in
20 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
21 Insurance Code, to each of the vendor's full-time employees and
22 dependents of full-time employees if:

23 (1) the goods or services meet municipality or county
24 specifications regarding quantity and quality; and

25 (2) the cost of the goods or services does not exceed
26 the ultimate cost to the municipality or county that would result if
27 the municipality or county procured similar goods or services from
28 a vendor that does not demonstrate that the vendor provides health
29 benefits coverage to the vendor's employees and employees'
30 dependents.

31 (b) A municipality or county may not give preference under

1 this section to a vendor that provides health benefits coverage to
2 its employees over a vendor with 50 or fewer employees that does not
3 provide health benefits coverage to its employees and employees'
4 dependents. 29/2

5 SECTION 4.13. Section 271.113, Local Government Code, is
6 amended by adding Subsection (c) to read as follows:

7 (c) In addition to other considerations under this section,
8 in determining to whom to award a contract, a municipality or county
9 may consider whether the vendor provides health benefits coverage
10 that is at least equivalent to a standard health benefit plan
11 offered in accordance with Article 3.80, Article 20A.09N, or
12 Chapter 1507, Insurance Code, to each of the vendor's full-time
13 employees and dependents of full-time employees.

14 SECTION 4.14. Subchapter H, Chapter 271, Local Government
15 Code, is amended by adding Section 271.1131 to read as follows:

16 Sec. 271.1131. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
17 BENEFITS COVERAGE. (a) A municipality or county procuring goods or
18 services shall give preference to goods or services of a vendor that
19 demonstrates that the vendor provides health benefits coverage that
20 is at least equivalent to a standard health benefit plan offered in
21 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
22 Insurance Code, to each of the vendor's full-time employees and
23 dependents of full-time employees if:

24 (1) the goods or services meet municipality or county
25 specifications regarding quantity and quality; and

26 (2) the cost of the goods or services does not exceed
27 the ultimate cost to the municipality or county that would result if
28 the municipality or county procured similar goods or services from
29 a vendor that does not demonstrate that the vendor provides health
30 benefits coverage to the vendor's employees and employees'
31 dependents. 12/31

1 (b) A municipality or county may not give preference under
2 this section to a vendor that provides health benefits coverage to
3 its employees over a vendor with 50 or fewer employees that does not
4 provide health benefits coverage to its employees and employees'
5 dependents.

6 SECTION 4.15. The changes in law made by this article apply
7 only to a contract for the procurement of goods and services for
8 which the solicitation of bids or proposals, request for proposals,
9 or similar required notification as to the goods or services is
10 published on or after September 1, 2005. A contract for the
11 procurement of goods and services for which the solicitation of
12 bids or proposals, request for proposals, or similar required
13 notification as to the goods or services is published before
14 September 1, 2005, is governed by the law in effect at the time the
15 solicitation, request, or notification is published, and that law
16 is continued in effect for that purpose.

ADOPTED

FLOOR AMENDMENT NO. 5

^{vv}
MAY 13 2005

BY: Deneff

Lotay Spaw
Secretary of the Senate

1 Amend the committee report printing of C.S.S.B. No. 12 as
2 follows:

3
4 ^{(b)(5)}
5 ¹⁹ (1) In SECTION 1.05, Section 2262.057, Government Code (page 2
6 contract) strike "payments made or outstanding under the
7 under the contract".

8
9 ^{(b)(6)}
10 ^{20 21} (2) In SECTION 1.05, Section 2262.057, Government Code (page 2
11 performed) strike "key contract terms that have not yet been
12 compliance in terms of timeliness standards".

13
14 (3) In SECTION 1.05, Section 2262.063, Government Code (page 3,
15 ⁷⁻¹² Lines 14-19) strike Subsection (b) and substitute the following:

^{Insert 16}
16 ^{Att 5}
17 ⁽³⁾ (b) Each state agency shall promulgate administrative rules to
18 ^{at} establish a monetary threshold above which agency contracts and
19 ^{p. 6, l. 7} amendments to agency contracts require written authorization by
20 the agency executive director.

21
22 (4) In SECTION 1.05, Section 2262.059, Government Code (page 2
23 ²⁰ Line 42) insert the following subsection (c) and reletter the
24 existing subsections appropriately:

^{Insert 25}
25 ^{Att 5}
26 ⁽⁴⁾ (c) The commission shall establish an evaluation process that
27 ^{at} allows vendors who receive an unfavorable performance review to
28 ^{p. 4, l. 20} protest any classification given by the commission.

29
30 ⁶
31 ²⁴ (5) In SECTION 1.05, Section 2262.065, Government Code (page 3,
32 Line 31) strike "shall" and substitute "may".

33 ⁷
34 ^{ll 23-25} (6) In SECTION 1.05, Section 2262.066, Government Code (page 3,
35 line 57) strike subsection (b). ^{p. 7, l. 26} reletter

36 ^{13/2}
37 (7) In SECTION 1.07, Section 2262.252, Government Code (page 5,
38 ⁹ line 39) insert subsection (b) and reletter existing subsections ^{p. 12, l. 4}

1 accordingly:

Insert

FA#5
(7)
4
2/21
6.9

3 (b) this section does not apply to contract extensions
4 that are specifically established as a component of the original
5 procurement.
6

Engrossed May 13, 2005
Mardi Cleland
Engrossing Clerk

I certify this to be a true and correct
copy of the indicated document as
referred or transmitted to committee.

Chief Clerk of the House

By: Zaffirini, et al.

S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to contracting and ethics issues of governmental entities;
providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Section 2262.001, Government Code, is amended
by amending Subdivision (3) and adding Subdivision (3-a) to read as
follows:

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties
for the state agency [~~as determined by the agency in consultation
with the state auditor~~].

(3-a) "Executive director" means the administrative
head of a state agency.

SECTION 1.02. Subchapter A, Chapter 2262, Government Code,
is amended by adding Section 2262.0015 to read as follows:

Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. The
commission by rule shall establish threshold requirements that
exclude small or routine contracts, including purchase orders, from
the application of this chapter.

SECTION 1.03. The heading to Section 2262.053, Government
Code, is amended to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

S.B. No. 12

SECTION 1.04. Section 2262.053, Government Code, is amended by amending Subsections (a) and (d) and adding Subsections (e) and (f) to read as follows:

(a) In coordination with the comptroller, Department of Information Resources, ~~[and]~~ state auditor, and Health and Human Services Commission, the commission or a private vendor selected by the commission shall develop ~~[or administer]~~ a training program for contract managers.

(d) The commission ~~[Texas Building and Procurement Commission]~~ shall administer the training program under this section.

(e) The commission shall certify contract managers who have completed the contract management training required under this section and keep a list of those contract managers.

(f) The program developed under this section must include a separate class on ethics and contracting.

SECTION 1.05. Subchapter B, Chapter 2262, Government Code, is amended by adding Section 2262.0535 and Sections 2262.055 through 2262.067 to read as follows:

Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The commission or a private vendor selected by the commission shall adapt the program developed under Section 2262.053 to develop an abbreviated program for training the members of the governing bodies of state agencies. The training may be provided together with other required training for members of state agency governing bodies.

(b) All members of the governing body of a state agency

shall complete at least one course of the training developed under this section. This subsection does not apply to a state agency that does not enter into any contracts.

Sec. 2262.055. FEES FOR TRAINING. The commission shall set and collect a fee from state agencies that receive training under this subchapter in an amount that recovers the commission's costs for the training.

Sec. 2262.056. STATE AGENCY REPOSITORY. Each state agency shall maintain in a central location all contracts for that agency.

Sec. 2262.057. CONTRACTS DATABASE. (a) The commission shall store in a database information on contracts provided by state agencies under this section.

(b) Each state agency shall periodically provide to the commission information regarding contracts entered into by the agency, including:

- (1) the name of the contractor;
- (2) the contract value;
- (3) the beginning date and end date of the contract;
- (4) a description of any amendments made to the contract;
- (5) cumulative payments and encumbrances under the contract;
- (6) key contract terms that are out of compliance in terms of timeliness standards; and

(7) any other information that the commission considers necessary for the database created under this section.

(c) The commission shall set appropriate criteria to

1 determine when and what information should be updated.

2 (d) The commission shall make the database available to
3 state agencies and searchable by:

4 (1) contractor;

5 (2) contract value;

6 (3) state agency; and

7 (4) date, including both the beginning date and the
8 end date of the contract.

9 Sec. 2262.058. REPORTING CONTRACTOR PERFORMANCE.

10 (a) After a contract is completed or otherwise terminated, each
11 state agency shall review the contractor's performance under the
12 contract.

13 (b) Using the forms developed by the team under Sections
14 2262.104 and 2262.105, the state agency shall report to the
15 commission on the results of the review regarding the contractor's
16 performance under the contract.

17 Sec. 2262.059. CONTRACTOR PERFORMANCE DATABASE. (a) The
18 commission shall store in a database contractor performance reviews
19 as provided by this section.

20 (b) The commission shall evaluate the contractor's
21 performance based on the information reported under Section
22 2262.058 and criteria established by the commission.

23 (c) The commission shall establish an evaluation process
24 that allows vendors who receive an unfavorable performance review
25 to protest any classification given by the commission.

26 (d) The commission shall develop a database that
27 incorporates the performance reviews and aggregates the reviews for

1 each contractor.

2 (e) A state agency may use the performance review database
 3 to determine whether to award a contract to a contractor reviewed in
 4 the database.

5 Sec. 2262.060. EXCLUDING CONTRACTOR FROM SOLICITATION
 6 PROCESS. Based on its own contractor performance reviews and on
 7 information in the database developed under Section 2262.059, a
 8 state agency may exclude a contractor from the solicitation process
 9 for a contract if the agency determines the contractor has
 10 performed poorly on a previous state contract without regard to
 11 whether the contractor has been barred under Section 2155.077.

12 Sec. 2262.061. PERFORMANCE MEASURES; REPORTS. (a) Each
 13 state agency shall develop a plan for incorporating performance
 14 measures into all contracts entered into by the agency.

15 (b) This includes ensuring that performance measures are
 16 written into each contract prior to execution.

17 (c) Not later than March 1 of each year, each state agency
 18 shall report to the team, governor, lieutenant governor, and
 19 speaker of the house of representatives regarding performance
 20 measures in the agency's contracts. The report must describe the
 21 agency's efforts to include performance-based provisions in the
 22 agency's contracts.

23 (d) The state agency shall make the report accessible to the
 24 public on the agency's website.

25 Sec. 2262.062. CONTRACT MANAGERS. (a) Each state agency
 26 that enters into contracts other than interagency contracts shall
 27 establish a career ladder program for contract management in the

agency.

(b) An employee hired as a contract manager shall oversee and may, as appropriate, engage in procurement planning, contract solicitation, contract formation, price establishment, and other contract activities.

(c) Each state agency shall determine, in consultation with the state auditor, the amount and significance of contract management duties sufficient for an employee to be considered a contract manager under this chapter.

Sec. 2262.063. APPROVAL OF CONTRACTS. (a) Each state agency shall establish formal guidelines regarding who may approve a contract for the agency.

(b) Each state agency shall promulgate administrative rules to establish a monetary threshold above which agency contracts and amendments to agency contracts require written authorization by the agency executive director.

(c) For state agency contracts valued in excess of \$1 million the agency executive director must authorize a contract amendment in writing.

(d) Each state agency shall annually report to the commission a list of each person authorized to approve contracts at the agency. The list must include the person's name, position, and supervisory responsibility, if any.

Sec. 2262.064. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE PROHIBITED. A state agency may not negotiate a contract with only one employee engaging in the negotiation.

Sec. 2262.065. CONSISTENT PRICING BY CONTRACTORS. (a) The

commission may solicit a contract for the creation of a mechanism for tracking and comparing prices that state agencies pay for similar products or services.

(b) On behalf of the state, a contractor awarded a contract under Subsection (a) may renegotiate state agency contracts for products or services to obtain the best value for the state when the tracking and comparing mechanism shows a disparity in the price paid for similar products or services. A contract under Subsection (a) may allow the selected contractor to keep a percentage of the savings obtained in the renegotiated contracts.

(c) A state agency shall give a contractor selected under Subsection (a) the information the contractor requires for the purpose of tracking and comparing prices that state agencies pay for similar products and services.

(d) A contractor selected under Subsection (a) may not sell information it receives under Subsection (c) or otherwise make use of the information for a purpose other than performing its contract with the state.

Sec. 2262.066. EXCEPTION TO RENEGOTIATION REQUIREMENT.

(a) A state agency may exclude a contract from the application of Section 2262.065 if it determines that renegotiation of the contract under that section will affect the state negatively. The state agency must notify the commission, lieutenant governor, and speaker of the house of representatives regarding this determination and explain why renegotiation of the contract is contrary to the state's overall interest.

(b) The commission shall adopt rules and procedures to

document this process, including a requirement that the executive directors of the commission and the state agency making the determination formally approve the determination by signature or other appropriate method.

Sec. 2262.067. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN CONTRACTS. (a) If a state agency determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of \$10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions, the agency shall create an optimized model for the identified functions or services to determine how and at what cost the agency could most efficiently provide the functions or services.

(b) The model must show consideration of all relevant factors, including:

- (1) best practices in Texas and other states;
- (2) available technology;
- (3) access to benefits and services for clients; and
- (4) program integrity.

(c) An agency that develops an optimized model under this section shall use it as the basis for cost comparison when deciding whether to outsource the identified functions or services.

(d) A model developed under this section is confidential and is not subject to disclosure under Chapter 552 until a final determination has been made to award the contract for which the model was developed.

SECTION 1.06. Subchapter C, Chapter 2262, Government Code,

is amended by adding Sections 2262.104 and 2262.105 to read as follows:

Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The team shall develop and publish a uniform set of definitions for use as applicable in state contracts.

(b) The team shall develop and publish a uniform and automated set of forms that a state agency may use in the different stages of the contracting process.

Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE. As part of the uniform forms published under Section 2262.104, the team shall develop forms for use by state agencies in reporting a contractor's performance under Section 2262.058.

SECTION 1.07. Chapter 2262, Government Code, is amended by adding Subchapters D, E, and F to read as follows:

SUBCHAPTER D. CONTRACT PROVISIONS

Sec. 2262.151. USE OF UNIFORM FORMS. A state agency may use the forms developed under Section 2262.104 as templates, guides, or samples for contracts entered into by the agency.

Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE. (a) The team shall develop recommendations for contract terms regarding penalties for contractors who do not comply with a contract, including penalties for contractors who do not disclose conflicts of interest under Section 2262.201. The team may develop recommended contract terms that are generally applicable to state contracts and terms that are applicable to important types of state contracts.

(b) A state agency may include applicable recommended terms

in a contract entered into by the agency.

Sec. 2262.153. REQUIRED PROVISION RELATING TO
SUBCONTRACTOR COMPLIANCE. Each state agency contract must require
that each contractor provide a list of all subcontractors and
include a provision that:

(1) holds the contractor responsible for the conduct
of all subcontractors in complying with the contractor's contract
with the state agency; and

(2) requires each subcontractor to disclose all
potential conflicts of interest to the state agency, according to
guidelines developed under Section 2262.201(b), when the
subcontractor contracts with or is otherwise hired by the
contractor.

Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
STATE AGENCY EMPLOYEES. (a) The team shall develop a standard
contract provision requiring a contractor and subcontractor to
disclose each employee:

(1) who was employed by:

(A) the state at any time during the two years
before the date of the disclosure and is now employed by the
contractor; and

(B) the contractor at any time during the year
before the date of the disclosure and is now employed by the state;
and

(2) who is:

(A) materially involved in the development of the
contract terms or the management of the contract; or

1 (B) employed at the executive level with the
2 contractor.

3 (b) A state agency shall include the provision in a contract
4 entered into by the agency.

5 Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
6 OUTSOURCING. (a) Each contract entered into by a state agency
7 must include a provision requiring disclosure of any services
8 materially necessary to fulfill the contract, including services
9 performed by a subcontractor, that will be or are performed in a
10 country other than the United States. This section does not apply
11 to services that are incidental to fulfilling the contract.

12 (b) The contract must include a provision allowing the state
13 agency to terminate the contract and solicit a new contract if:

14 (1) the contractor or a subcontractor of the
15 contractor performs a service materially necessary to fulfill the
16 contract in a country other than the United States; and

17 (2) the contractor did not disclose in the contract at
18 the time the contract was originally entered into that the service
19 would be performed in a country other than the United States.

20 (c) A state agency that decides not to solicit a new
21 contract under circumstances in which the agency is authorized to
22 do so under a contract provision required by Subsection (b) shall
23 report this decision to:

24 (1) the governor;

25 (2) the lieutenant governor;

26 (3) the speaker of the house of representatives; and

27 (4) the team.

1 Sec. 2262.156. HIRING PREFERENCE PROVISION FOR CERTAIN
2 LARGE CONTRACTS. If a state agency determines that a proposed
3 contract or proposed contract amendment would outsource existing
4 services or functions performed by the agency that have a value of
5 \$10,000,000 or more, or that would lead to the loss of 100 or more
6 existing state employee positions, the contract or contract
7 amendment must contain a provision that requires the contractor to
8 give preference in hiring to former employees of a state agency:

9 (1) whose employment is terminated because of the
10 contract or contract amendment; and

11 (2) who satisfy the contractor's hiring criteria for
12 that position.

13 [Sections 2262.157-2262.200 reserved for expansion]

14 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

15 Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each
16 contractor who responds to a state agency's contract solicitation
17 shall disclose in its response all potential conflicts of interest
18 to the agency.

19 (b) The team shall develop guidelines to aid contractors and
20 state agencies in identifying potential conflicts of interest.

21 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING
22 CLASS. Each executive director of a state agency shall annually
23 complete the ethics and contracting class developed under Section
24 2262.053. This section does not apply to a state agency that does
25 not enter into any contracts.

26 [Sections 2262.203-2262.250 reserved for expansion]

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2262.251. CONTRACT AMENDMENTS AND CHANGE ORDERS.

(a) An amendment to a contract, including a change order, is subject to the same approval processes as the original contract.

(b) A state agency may not amend a contract unless:

(1) the agency complies with the same approval processes for the amendment as required for the original contract; and

(2) a contract manager for the agency states in writing why the amendment is necessary.

(c) This section does not require a new solicitation for a new contract.

Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) If a proposed contract amendment or extension changes the monetary value of a contract by more than 10 percent, the state agency must obtain review and approval from the team and the agency's executive director before the agency amends or extends the contract.

(b) This section does not apply to contract extensions that are specifically established as a component of the original procurement.

SECTION 1.08. Section 2262.003, Government Code, is transferred to Subchapter D, Chapter 2262, Government Code, as added by this Act, is redesignated as Section 2262.156, Government Code, and is amended to read as follows:

Sec. 2262.156 [~~2262.003~~]. REQUIRED [CONTRACT] PROVISION RELATING TO AUDITING. (a) Each state agency shall include in each of its contracts a term that provides that:

1 (1) the state auditor may conduct an audit or
2 investigation of any entity receiving funds from the state directly
3 under the contract or indirectly through a subcontract under the
4 contract; and

5 (2) acceptance of funds directly under the contract or
6 indirectly through a subcontract under the contract acts as
7 acceptance of the authority of the state auditor, under the
8 direction of the legislative audit committee, to conduct an audit
9 or investigation in connection with those funds.

10 (b) The state auditor shall provide assistance to a state
11 agency in developing the contract provisions.

12 SECTION 1.09. (a) Sections 2262.064 and 2262.067,
13 Government Code, as added by this article, apply only to a contract
14 for which a state agency first advertises or otherwise solicits
15 bids, proposals, offers, or qualifications on or after the
16 effective date of this Act.

17 (b) Subsection (a), Section 2262.201, Government Code, as
18 added by this article, applies only in relation to a contract for
19 which a state agency first solicits bids, proposals, offers, or
20 qualifications on or after the date that the Contract Advisory
21 Team's guidelines regarding potential conflicts of interest take
22 effect.

23 SECTION 1.10. Not later than March 1, 2006, the Texas
24 Building and Procurement Commission shall develop the training
25 program, including the ethics and contracting class, required by
26 Section 2262.053, Government Code, as amended by this article, and
27 Section 2262.0535, Government Code, as added by this article.

1 SECTION 1.11. A member of a governing body of a state agency
2 is not required to complete the training developed under Section
3 2262.0535, Government Code, as added by this article, until
4 September 1, 2007.

5 SECTION 1.12. An executive director of a state agency is not
6 required to comply with Section 2262.202, Government Code, as added
7 by this article, until September 1, 2007.

8 SECTION 1.13. A contract manager is not required to be
9 certified under Chapter 2262, Government Code, as amended by this
10 article, until September 1, 2007.

11 SECTION 1.14. (a) As soon as practicable, and not later
12 than March 1, 2006, the Contract Advisory Team shall develop the
13 forms, criteria, recommendations, and provisions required by this
14 article, including Sections 2262.104, 2262.105, 2262.152, and
15 2262.154 and Subsection (b), Section 2262.201, Government Code, as
16 added by this article.

17 (b) A state agency is not required to comply with Sections
18 2262.056 through 2262.063 and Sections 2262.153, 2262.154,
19 2262.155, and 2262.156, Government Code, as added by this article,
20 until September 1, 2007. A state agency may comply earlier if the
21 forms, electronic requirements, database, or other items are
22 available before that date.

23 ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCIAL DISCLOSURE,
24 STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

25 SECTION 2.01. Subchapter C, Chapter 572, Government Code,
26 is amended by adding Section 572.060 to read as follows:

27 Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR

EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) In this section:

(1) "Legislative consultant" means:

(A) a person providing services under contract as a consultant to the senate, the house of representatives, or a member or committee of either house; or

(B) a person providing services under contract as a consultant to a state agency in connection with legislation or communications with members of the legislature or legislative employees.

(2) "Legislative employee" means a person employed by:

(A) the senate, the house of representatives, or a committee of either house; or

(B) a member of the legislature acting in the member's official capacity.

(3) "Member of the governor's executive staff" means a person employed by the governor acting in the governor's official capacity whose regular job duties include:

(A) the formulation of policy or testifying before and meeting with members of the legislature; or

(B) supervising other employees in the governor's office whose regular job duties include those described by Paragraph (A).

(4) "State agency legislative liaison" means an employee of a state agency who serves as a legislative liaison or government affairs officer or acts in a similar capacity or whose regular job duties include testifying before and meeting with

1 members of the legislature.

2 (5) "State agency procurement agent" means an employee
3 of a state agency whose regular job duties include soliciting,
4 evaluating, or awarding bids, proposals, or contracts for the
5 procurement by the state agency of property or services.

6 (b) This section applies to an appointed officer, executive
7 head of a state agency, member of the governor's executive staff,
8 legislative employee, state agency legislative liaison, state
9 agency procurement agent, or legislative consultant.

10 (c) For purposes of this section, a person to whom this
11 section applies has a conflict of interest if the person has a
12 personal financial or other interest in the subject matter of a
13 governmental decision or action that compromises or has the
14 appearance of compromising the person's professional judgment or
15 integrity.

16 (d) A person to whom this section applies who has a conflict
17 of interest with respect to a governmental decision or action
18 shall:

19 (1) disclose the conflict in writing delivered to the
20 state officer or state agency employing or contracting with the
21 person; and

22 (2) abstain from further participation in the
23 governmental decision or action.

24 (e) A person who violates this section is liable for a civil
25 penalty of not less than \$500 and not more than the value of a
26 monetary gain the person receives because of the governmental
27 decision or action.

(f) Subsection (e) does not prohibit:

(1) the imposition of a civil penalty under Chapter 571; or

(2) removal of an appointed officer under Section 572.058 for conduct that violates both this section and Section 572.058.

SECTION 2.02. Section 572.060, Government Code, as added by this article, applies only to participation in a governmental decision made or action taken on or after September 1, 2005. Participation in a governmental decision made or action taken before September 1, 2005, is governed by the law in effect on the date the decision is made or the action is taken, and the former law is continued in effect for that purpose.

ARTICLE 3. CHANGES RELATED TO STATE AUDIT CONTRACTS

SECTION 3.01. Subsection (a), Section 321.020, Government Code, is amended to read as follows:

(a) Notwithstanding any other law, a state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), may employ a private auditor to audit the state agency or corporation only if:

(1) the agency or corporation is authorized to contract with a private auditor [~~do so by law or~~] through a delegation of authority from the state auditor;

(2) the scope of the proposed audit has been submitted to the state auditor for review and comment; and

(3) the services of the private auditor are procured through a competitive selection process in a manner allowed by law.

SECTION 3.02. Subsection (a), Section 2113.102, Government Code, is amended to read as follows:

(a) A state agency may not use appropriated money to contract with a person to audit ~~[the financial records or accounts of]~~ the agency except:

(1) as provided by ~~[+]~~

~~[(1)]~~ Subsections (b), (c), and (d); and

(2) in accordance with Section 321.020 ~~[Chapter 466, pertaining to the state lottery,~~

~~[(3) Chapter 2306, pertaining to the Texas Department of Housing and Community Affairs, and~~

~~[(4) Chapter 361, Transportation Code, pertaining to the Texas Turnpike Authority division of the Texas Department of Transportation].~~

SECTION 3.03. Subsection (a), Section 321.020, Government Code, as amended by this article, applies only to a contract that is entered into, amended, extended, or renewed on or after the effective date of this Act.

ARTICLE 4. PREFERENCE IN GOVERNMENTAL PURCHASING DECISIONS FOR VENDORS THAT PROVIDE HEALTH BENEFITS TO EMPLOYEES

SECTION 4.01. Subsection (b), Section 44.031, Education Code, is amended to read as follows:

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district may consider:

(1) the purchase price;

1 (2) the reputation of the vendor and of the vendor's
2 goods or services;

3 (3) the quality of the vendor's goods or services;

4 (4) the extent to which the goods or services meet the
5 district's needs;

6 (5) the vendor's past relationship with the district;

7 (6) the impact on the ability of the district to comply
8 with laws and rules relating to historically underutilized
9 businesses;

10 (7) the total long-term cost to the district to
11 acquire the vendor's goods or services; ~~and~~

12 (8) whether the vendor provides health benefits
13 coverage to employees; and

14 (9) any other relevant factor specifically listed in
15 the request for bids or proposals.

16 SECTION 4.02. Subchapter B, Chapter 44, Education Code, is
17 amended by adding Section 44.0421 to read as follows:

18 Sec. 44.0421. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
19 BENEFITS COVERAGE. (a) A district procuring goods or services
20 shall give preference to goods or services of a vendor that
21 demonstrates that the vendor provides health benefits coverage that
22 is at least equivalent to a standard health benefit plan offered in
23 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
24 Insurance Code, to each of the vendor's full-time employees and
25 dependents of full-time employees if:

26 (1) the goods or services meet district specifications
27 regarding quantity and quality; and

1 (2) the cost of the goods or services does not exceed
2 the ultimate cost to the district that would result if the district
3 procured similar goods or services from a vendor that does not
4 demonstrate that the vendor provides health benefits coverage to
5 the vendor's employees and employees' dependents.

6 (b) A district may not give preference under this section to
7 a vendor that provides health benefits coverage to its employees
8 over a vendor with 50 or fewer employees that does not provide
9 health benefits coverage to its employees and employees'
10 dependents.

11 SECTION 4.03. Subsection (b), Section 51.9335, Education
12 Code, is amended to read as follows:

13 (b) In determining what is the best value to an institution
14 of higher education, the institution shall consider:

15 (1) the purchase price;

16 (2) the reputation of the vendor and of the vendor's
17 goods or services;

18 (3) the quality of the vendor's goods or services;

19 (4) the extent to which the goods or services meet the
20 institution's needs;

21 (5) the vendor's past relationship with the
22 institution;

23 (6) the impact on the ability of the institution to
24 comply with laws and rules relating to historically underutilized
25 businesses and to the procurement of goods and services from
26 persons with disabilities;

27 (7) the total long-term cost to the institution of

1 acquiring the vendor's goods or services;

2 (8) any other relevant factor that a private business
3 entity would consider in selecting a vendor; ~~and~~

4 (9) the use of material in construction or repair to
5 real property that is not proprietary to a single vendor unless the
6 institution provides written justification in the request for bids
7 for use of the unique material specified; and

8 (10) whether the vendor provides health benefits
9 coverage to employees.

10 SECTION 4.04. Subchapter 2, Chapter 51, Education Code, is
11 amended by adding Section 51.9336 to read as follows:

12 Sec. 51.9336. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
13 BENEFITS COVERAGE. (a) In this section, "institution of higher
14 education" has the meaning assigned by Section 61.003.

15 (b) An institution of higher education procuring goods or
16 services shall give preference to goods or services of a vendor that
17 demonstrates that the vendor provides health benefits coverage that
18 is at least equivalent to a standard health benefit plan offered in
19 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
20 Insurance Code, to each of the vendor's full-time employees and
21 dependents of full-time employees if:

22 (1) the goods or services meet institution
23 specifications regarding quantity and quality; and

24 (2) the cost of the goods or services does not exceed
25 the ultimate cost to the institution that would result if the
26 institution procured similar goods or services from a vendor that
27 does not demonstrate that the vendor provides health benefits

1 coverage to the vendor's employees and employees' dependents.

2 (c) An institution of higher education may not give
3 preference under this section to a vendor that provides health
4 benefits coverage to its employees over a vendor with 50 or fewer
5 employees that does not provide health benefits coverage to its
6 employees and employees' dependents.

7 SECTION 4.05. Subsection (b), Section 73.115, Education
8 Code, is amended to read as follows:

9 (b) In determining what is the best value to the
10 institution, the institution shall consider:

11 (1) the purchase price;

12 (2) the reputation of the vendor and of the vendor's
13 goods or services;

14 (3) the quality of the vendor's goods or services;

15 (4) the extent to which the goods or services meet the
16 institution's needs;

17 (5) the vendor's past relationship with the
18 institution;

19 (6) the impact on the ability of the institution to
20 comply with laws and rules relating to historically underutilized
21 businesses;

22 (7) the total long-term cost to the institution of
23 acquiring the vendor's goods or services; ~~and~~

24 (8) as provided by Section 51.9336, whether the vendor
25 provides health benefits coverage to employees; and

26 (9) any other relevant factor that a private business
27 entity would consider in selecting a vendor.

SECTION 4.06. Subsection (b), Section 74.008, Education Code, is amended to read as follows:

(b) In determining what is the best value to the medical branch, the medical branch shall consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the medical branch's needs;
- (5) the vendor's past relationship with the medical branch;
- (6) the impact on the ability of the medical branch to comply with laws and rules relating to historically underutilized businesses;
- (7) the total long-term cost to the medical branch of acquiring the vendor's goods or services; ~~and~~
- (8) as provided by Section 51.9336, whether the vendor provides health benefits coverage to employees; and
- (9) any other relevant factor that a private business entity would consider in selecting a vendor.

SECTION 4.07. Subsection (b), Section 2155.074, Government Code, is amended to read as follows:

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the commission or other state agency may, subject to Subsection (c) and

Section 2155.075, consider other relevant factors, including:

- (1) installation costs;
- (2) life cycle costs;
- (3) the quality and reliability of the goods and services;
- (4) the delivery terms;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
- (6) the cost of any employee training associated with a purchase;
- (7) the effect of a purchase on agency productivity;
- (8) the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment;
- (9) whether the vendor provides health benefits coverage to employees; and
- (10) ~~(9)~~ other factors relevant to determining the best value for the state in the context of a particular purchase.

SECTION 4.08. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.452 to read as follows:

Sec. 2155.452. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) The commission and all state agencies procuring goods or services shall give preference to goods or services of a vendor that demonstrates that the vendor provides

1 health benefits coverage that is at least equivalent to a standard
2 health benefit plan offered in accordance with Article 3.80,
3 Article 20A.09N, or Chapter 1507, Insurance Code, to each of the
4 vendor's full-time employees and dependents of full-time employees
5 if:

6 (1) the goods or services meet state specifications
7 regarding quantity and quality; and

8 (2) the cost of the goods or services does not exceed
9 the ultimate cost to the commission or state agency that would
10 result if the commission or state agency procured similar goods or
11 services from a vendor that does not demonstrate that the vendor
12 provides health benefits coverage to the vendor's employees and
13 employees' dependents.

14 (b) The commission or a state agency may not give preference
15 under this section to a vendor that provides health benefits
16 coverage to its employees over a vendor with 50 or fewer employees
17 that does not provide health benefits coverage to its employees and
18 employees' dependents.

19 SECTION 4.09. Subsection (b), Section 252.043, Local
20 Government Code, is amended to read as follows:

21 (b) In determining the best value for the municipality, the
22 municipality may consider:

- 23 (1) the purchase price;
- 24 (2) the reputation of the bidder and of the bidder's
25 goods or services;
- 26 (3) the quality of the bidder's goods or services;
- 27 (4) the extent to which the goods or services meet the

1 municipality's needs;

2 (5) the bidder's past relationship with the
3 municipality;

4 (6) the impact on the ability of the municipality to
5 comply with laws and rules relating to contracting with
6 historically underutilized businesses and nonprofit organizations
7 employing persons with disabilities;

8 (7) the total long-term cost to the municipality to
9 acquire the bidder's goods or services; ~~and~~

10 (8) whether the bidder provides health benefits
11 coverage to employees; and

12 (9) any relevant criteria specifically listed in the
13 request for bids or proposals.

14 SECTION 4.10. Subchapter C, Chapter 252, Local Government
15 Code, is amended by adding Section 252.0431 to read as follows:

16 Sec. 252.0431. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
17 BENEFITS COVERAGE. (a) A municipality procuring goods or services
18 shall give preference to goods or services of a vendor that
19 demonstrates that the vendor provides health benefits coverage that
20 is at least equivalent to a standard health benefit plan offered in
21 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
22 Insurance Code, to each of the vendor's full-time employees and
23 dependents of full-time employees if:

24 (1) the goods or services meet municipality
25 specifications regarding quantity and quality; and

26 (2) the cost of the goods or services does not exceed
27 the ultimate cost to the municipality that would result if the

1 municipality procured similar goods or services from a vendor that
2 does not demonstrate that the vendor provides health benefits
3 coverage to the vendor's employees and employees' dependents.

4 (b) A municipality may not give preference under this
5 section to a vendor that provides health benefits coverage to its
6 employees over a vendor with 50 or fewer employees that does not
7 provide health benefits coverage to its employees and employees'
8 dependents.

9 SECTION 4.11. Subchapter C, Chapter 262, Local Government
10 Code, is amended by adding Section 262.0271 to read as follows:

11 Sec. 262.0271. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
12 BENEFITS COVERAGE. (a) The commissioners court of a county
13 procuring goods or services shall give preference to goods or
14 services of a vendor that demonstrates that the vendor provides
15 health benefits coverage that is at least equivalent to a standard
16 health benefit plan offered in accordance with Article 3.80,
17 Article 20A.09N, or Chapter 1507, Insurance Code, to each of the
18 vendor's full-time employees and dependents of full-time employees
19 if:

20 (1) the goods or services meet county specifications
21 regarding quantity and quality; and

22 (2) the cost of the goods or services does not exceed
23 the ultimate cost to the county that would result if the
24 commissioners court procured similar goods or services from a
25 vendor that does not demonstrate that the vendor provides health
26 benefits coverage to the vendor's employees and employees'
27 dependents.

1 (b) A commissioners court may not give preference under this
2 section to a vendor that provides health benefits coverage to its
3 employees over a vendor with 50 or fewer employees that does not
4 provide health benefits coverage to its employees and employees'
5 dependents.

6 SECTION 4.12. Subchapter C, Chapter 271, Local Government
7 Code, is amended by adding Section 271.0571 to read as follows:

8 Sec. 271.0571. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
9 BENEFITS COVERAGE. (a) A municipality or county procuring goods
10 or services shall give preference to goods or services of a vendor
11 that demonstrates that the vendor provides health benefits coverage
12 that is at least equivalent to a standard health benefit plan
13 offered in accordance with Article 3.80, Article 20A.09N, or
14 Chapter 1507, Insurance Code, to each of the vendor's full-time
15 employees and dependents of full-time employees if:

16 (1) the goods or services meet municipality or county
17 specifications regarding quantity and quality; and

18 (2) the cost of the goods or services does not exceed
19 the ultimate cost to the municipality or county that would result if
20 the municipality or county procured similar goods or services from
21 a vendor that does not demonstrate that the vendor provides health
22 benefits coverage to the vendor's employees and employees'
23 dependents.

24 (b) A municipality or county may not give preference under
25 this section to a vendor that provides health benefits coverage to
26 its employees over a vendor with 50 or fewer employees that does not
27 provide health benefits coverage to its employees and employees'

1 dependents.

2 SECTION 4.13. Section 271.113, Local Government Code, is
3 amended by adding Subsection (c) to read as follows:

4 (c) In addition to other considerations under this section,
5 in determining to whom to award a contract, a municipality or county
6 may consider whether the vendor provides health benefits coverage
7 that is at least equivalent to a standard health benefit plan
8 offered in accordance with Article 3.80, Article 20A.09N, or
9 Chapter 1507, Insurance Code, to each of the vendor's full-time
10 employees and dependents of full-time employees.

11 SECTION 4.14. Subchapter H, Chapter 271, Local Government
12 Code, is amended by adding Section 271.1131 to read as follows:

13 Sec. 271.1131. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
14 BENEFITS COVERAGE. (a) A municipality or county procuring goods
15 or services shall give preference to goods or services of a vendor
16 that demonstrates that the vendor provides health benefits coverage
17 that is at least equivalent to a standard health benefit plan
18 offered in accordance with Article 3.80, Article 20A.09N, or
19 Chapter 1507, Insurance Code, to each of the vendor's full-time
20 employees and dependents of full-time employees if:

21 (1) the goods or services meet municipality or county
22 specifications regarding quantity and quality; and

23 (2) the cost of the goods or services does not exceed
24 the ultimate cost to the municipality or county that would result if
25 the municipality or county procured similar goods or services from
26 a vendor that does not demonstrate that the vendor provides health
27 benefits coverage to the vendor's employees and employees'

1 dependents.

2 **(b) A municipality or county may not give preference under**
3 **this section to a vendor that provides health benefits coverage to**
4 **its employees over a vendor with 50 or fewer employees that does not**
5 **provide health benefits coverage to its employees and employees'**
6 **dependents.**

7 SECTION 4.15. The changes in law made by this article apply
8 only to a contract for the procurement of goods and services for
9 which the solicitation of bids or proposals, request for proposals,
10 or similar required notification as to the goods or services is
11 published on or after September 1, 2005. A contract for the
12 procurement of goods and services for which the solicitation of
13 bids or proposals, request for proposals, or similar required
14 notification as to the goods or services is published before
15 September 1, 2005, is governed by the law in effect at the time the
16 solicitation, request, or notification is published, and that law
17 is continued in effect for that purpose.

18 ARTICLE 5. EFFECTIVE DATE

19 SECTION 5.01. This Act takes effect September 1, 2005.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 9, 2005

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to contracting and ethics issues of state agencies; providing a civil penalty.), **Committee Report 1st House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
--

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process not later than March 1, 2006.

In coordination with the State Auditor, Comptroller, Department of Information Resources, and the Health and Human Services Commission, the Texas Building and Procurement Commission (TBPC) would be required to develop a training program by March 1, 2006. TBPC would have to develop an abbreviated version of the training program for members of governing bodies of state agencies. All members of governing bodies would be required to complete at least one course of the training developed under this bill by September 1, 2007. The executive director of a state agency would have to complete the ethics and contracting course annually.

Each state agency would have to maintain contracts in a central location. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to TBPC. TBPC would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC would be required to solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

It is assumed that any additional duties or responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313 Department of Information Resources

LBB Staff: JOB, SD, JM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 9, 2005

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to contracting and ethics issues of state agencies; providing a civil penalty.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process not later than March 1, 2006.

In coordination with the State Auditor and the Texas Building and Procurement Commission (TBPC), the University of Texas at Austin (UT-Austin) would be required to develop a training program by March 1, 2006. UT-Austin would have to develop an abbreviated version of the training program for members of governing bodies of state agencies. All members of governing bodies would be required to complete at least one course of the training developed under this bill by September 1, 2007. The executive director of a state agency would have to complete the ethics and contracting course annually.

Each state agency would have to maintain contracts in a central location and provide the Department of Information Resources (DIR) with electronic copies of contracts. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to DIR. DIR would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC would be required to solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

It is assumed that any additional duties or responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313 Department of Information Resources

LBB Staff: JOB, SD, JM

HOUSE COMMITTEE REPORT

05 MAY 19 PM 9:44
HOUSE OF REPRESENTATIVES

1st Printing

By: Zaffirini, Barrientos, Brimer, Deuell,
Janek, Ogden, Shapleigh, et al.
(Issett)

S.B. No. 12

Substitute the following for S.B. No. 12:

By: Swinford

C.S.S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to state contract management, including the training of personnel, the negotiation of contracts, and the standardization of practices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 551, Government Code, is amended by adding Section 551.0726 to read as follows:

Sec. 551.0726. GOVERNING BODY OF STATE AGENCY:

DELIBERATION REGARDING CONTRACT BEING NEGOTIATED; CLOSED MEETING.

(a) In this section, "state agency" means a department, board, commission, or other agency in the executive branch of state government.

(b) The governing body of a state agency may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

(1) the governing body votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person; and

(2) the attorney advising the governing body issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person.

1 (c) Notwithstanding Section 551.103(a), the governing body
2 must make a tape recording of the proceedings of a closed meeting
3 held under this section.

4 SECTION 2. Section 2155.078, Government Code, is amended by
5 adding Subsection (o) to read as follows:

6 (o) In addition to the three levels of training provided by
7 this section, the commission shall develop and implement a
8 continuing education course on cost analysis and price negotiation.
9 State agency purchasing personnel who attend the course shall
10 review the course and provide the review to the commission.

11 SECTION 3. Subchapter B, Chapter 2155, Government Code, is
12 amended by adding Section 2155.085 to read as follows:

13 Sec. 2155.085. REPORT ON CERTAIN PURCHASES. (a) Not later
14 than August 1 of each year, the commission shall publish a report on
15 the number and dollar value of sole source purchases made and open
16 market purchases made or contracts awarded for which there were
17 fewer than three responses to the contract or open market
18 solicitation in the previous calendar year. The report must compare
19 the total dollar value of all sole source purchases made and all
20 open market purchases made or contracts awarded for which there
21 were fewer than three responses to the contract or open market
22 solicitation with the total dollar value of all competitively
23 awarded contracts and open market purchases for which there were
24 three or more responses to the contract or open market
25 solicitation.

26 (b) Each state agency shall timely provide the commission
27 with the information the commission requires for the purpose of

1 creating the report under Subsection (a).

2 (c) The commission shall establish requirements for the
3 provision of information under Subsection (b) in consultation with
4 the Contract Advisory Team created under Subchapter C, Chapter
5 2262, the Health and Human Services Commission, and the Texas
6 Department of Transportation.

7 (d) The commission may not require a state agency to provide
8 information under Subsection (b) on a contract related to health
9 and human services if:

10 (1) the value of the contract cannot be determined at
11 the time of execution of the contract; and

12 (2) any qualified vendor is eligible for the contract.

13 SECTION 4. Section 2262.001, Government Code, is amended by
14 adding Subdivision (3-a) to read as follows:

15 (3-a) "Department" means the Department of
16 Information Resources.

17 SECTION 5. Section 2262.051, Government Code, is amended by
18 adding Subsection (h) to read as follows:

19 (h) The commission, in consultation with the team, the
20 Health and Human Services Commission, and the Texas Department of
21 Transportation, shall establish criteria in the guide for
22 determining whether a proposed project requires a business case
23 under Section 2262.303 or a project plan under Section 2262.304.

24 SECTION 6. Section 2262.053, Government Code, is amended by
25 adding Subsections (e), (f), and (g) to read as follows:

26 (e) The commission shall establish minimum qualifications
27 for certifying contract managers. The minimum standards must

1 require completion of the contract management training required
2 under this section.

3 (f) The commission may establish a system of charges and
4 billings to recover the cost of administering the training program
5 under this section.

6 (g) The commission, in consultation with the team, the
7 Health and Human Services Commission, and the Texas Department of
8 Transportation, shall develop guidelines by which a state agency is
9 required to involve a contract manager during various stages of the
10 contracting process based on the size of the contract and the risk
11 associated with the contract.

12 SECTION 7. Subchapter B, Chapter 2262, Government Code, is
13 amended by adding Sections 2262.065-2262.067 to read as follows:

14 Sec. 2262.065. PERFORMANCE MEASURES. Each state agency
15 shall develop a plan for incorporating performance measures into an
16 appropriate percentage of contracts for services entered into by
17 the agency. The agency shall determine the appropriate percentage
18 in consultation with the commission.

19 Sec. 2262.066. INFORMATION-SHARING PORTAL. The commission
20 and department shall jointly:

21 (1) review the options for establishing an
22 information-sharing portal for use by state agencies in contract
23 management and administration; and

24 (2) if the commission and department determine that
25 establishing the portal is cost-effective, establish the portal.

26 Sec. 2262.067. UNIFORM DEFINITIONS AND CONTRACT LIBRARY.

27 (a) The commission shall develop and publish a uniform set of

1 definitions for use as applicable in state contracts.

2 (b) The commission shall develop and publish a uniform and
3 automated set of forms, including sample contracts and contract
4 terms, for use in the different stages of the contracting process.

5 SECTION 8. Chapter 2262, Government Code, is amended by
6 adding Subchapter G to read as follows:

7 SUBCHAPTER G. MANAGEMENT OF PROJECTS FOR CERTAIN MAJOR CONTRACTS

8 Sec. 2262.301. APPLICABILITY. This subchapter applies only
9 to a:

10 (1) project that is likely to result in a major
11 contract for services; and

12 (2) major contract for services.

13 Sec. 2262.302. GUIDELINES; FORMS. (a) A state agency shall
14 prepare each document required by this subchapter in a manner
15 consistent with commission guidelines.

16 (b) The commission, in consultation with the team, the
17 Health and Human Services Commission, and the Texas Department of
18 Transportation, shall develop and provide guidelines and forms for
19 the documents required by this subchapter.

20 Sec. 2262.303. BUSINESS CASE. (a) For each proposed
21 project that meets the criteria established under Section
22 2262.051(h), a state agency must prepare a business case providing
23 the initial justification for the related major contract, including
24 the anticipated return on investment in terms of cost savings and
25 efficiency for the contract.

26 (b) The agency shall file the document with the commission
27 and the Legislative Budget Board at the same time the agency files

1 its legislative appropriations request.

2 Sec. 2262.304. PROJECT PLANS. (a) A state agency shall
3 develop a project plan for each proposed project that meets the
4 criteria established under Section 2262.051(h).

5 (b) Except as provided by Subsection (c), the state agency
6 must file the project plan with the commission before the agency:

7 (1) spends more than 10 percent of allocated funds for
8 the related major contract; or

9 (2) first issues a contractor solicitation for the
10 related major contract.

11 (c) A state agency may not post in the state business daily a
12 contractor solicitation for the related major contract unless the
13 project plan has been filed under this section.

14 (d) The project plan must include:

15 (1) a procurement plan with anticipated service levels
16 and performance standards for each contractor; and

17 (2) a method for monitoring changes to the scope of a
18 related contract.

19 Sec. 2262.305. CONTRACT REVIEW. (a) A state agency shall
20 periodically review and report on the contractor's performance
21 throughout the term of the contract. The agency shall provide the
22 review to the agency's executive director and to the commission.

23 (b) The commission shall store in a database the contractor
24 performance reviews provided to the commission by state agencies
25 under Subsection (a).

26 (c) The commission shall make the database available to
27 state agencies and searchable by:

1 (1) contractor;
2 (2) contract value;
3 (3) state agency; and
4 (4) date, including both the beginning date and the
5 end date of the contract.

6 Sec. 2262.306. APPROVAL BY STATE AGENCIES. (a) A state
7 agency's executive director, or the executive director's designee,
8 and its designated contract manager must approve and sign each
9 document required by this subchapter.

10 (b) If a proposed contract amendment or change order changes
11 the monetary value of a contract by more than 10 percent or
12 significantly changes the completion date of a contract, the state
13 agency's executive director must approve the amendment or order.

14 Sec. 2262.307. NEGOTIATION CONTRACTS. (a) A state agency
15 shall consider contracting with a state governmental entity or a
16 private entity for negotiation services or advice on a contract if
17 the agency determines that:

18 (1) there is a substantial need for the negotiation
19 services or advice; and

20 (2) the agency cannot adequately perform the
21 negotiation services with its own personnel or cannot perform the
22 negotiation without advice.

23 (b) A state agency may contract with a private entity for
24 negotiation services or advice only if the agency determines that
25 it cannot obtain the consulting services through a contract with a
26 state governmental entity.

27 SECTION 9. (a) The Department of Information Resources, in

1 coordination with the Legislative Budget Board, the Texas Building
2 and Procurement Commission, and the comptroller, shall analyze
3 current automated information systems of state agencies to
4 determine how the systems may be combined to more effectively
5 standardize and synchronize state contract management, including
6 the use of performance measures in contracts.

7 (b) Not later than December 31, 2005, the department shall
8 report the results of its analysis to the governor, the lieutenant
9 governor, and the speaker of the house of representatives.

10 SECTION 10. A contract manager is not required to be
11 certified under Chapter 2262, Government Code, as amended by this
12 Act, until September 1, 2007.

13 SECTION 11. Not later than March 1, 2006, the Texas Building
14 and Procurement Commission shall develop the continuing education
15 course required by Section 2155.078(o), Government Code, as added
16 by this Act.

17 SECTION 12. A state agency is not required to comply with
18 Section 2262.303 or 2262.304, Government Code, as added by this
19 Act, until the contract management guide is revised as required by
20 Section 2262.051(h), Government Code, as added by this Act.

21 SECTION 13. This Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

05/18/2005
(date)

Sir:

We, your COMMITTEE ON STATE AFFAIRS

to whom was referred SB 12 have had the same under consideration and beg to report back with the recommendation that it

- () do pass, without amendment.
() do pass, with amendment(s).
☒ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
☒ yes () no A fiscal note was requested.
() yes ☒ no A criminal justice policy impact statement was requested.
() yes ☒ no An equalized educational funding impact statement was requested.
() yes ☒ no An actuarial analysis was requested.
() yes ☒ no A water development policy impact statement was requested.
() yes ☒ no A tax equity note was requested.
() The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor 1SETT

Joint Sponsors: _____ / _____ / _____

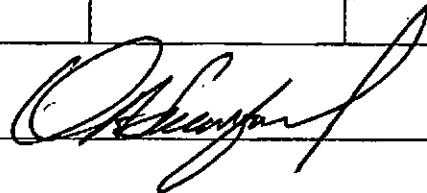
Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Swinford, Chair	X			
Miller, Vice-chair	X			
Cook	X			
Farrar				X
Gattis	X			
Keffer, J.	X			
Martinez Fischer				X
Villarreal	X			
Wong	X			

Total 7 aye
0 nay
0 present, not voting
2 absent

CHAIR



BILL ANALYSIS

C.S.S.B. 12
By: Zaffirini
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The manner in which state agencies engage in contracts with private and not-for-profit vendors is of vital concern for the state because it directly affects the use of state appropriated financial resources and, in some cases, the termination of state employee positions. In recent months, accounts have arisen that allege that some state agency employees engaged in improper actions when engaging in contracts on behalf of the state and investigations are currently underway. Examples like these highlight the need for increased oversight and training in the contracting process.

SB 12 improves the processes by which the state solicits, negotiates, enters into, and manages contracts with private and not-for-profit vendors by improving the training processes for employees involved in contracting; improving contract reporting mechanisms for state agencies; requiring needed provisions to address amendments; and addressing ethical issues specific to contracting.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Amends Chapter 551, Subchapter D of the Government Code, to add a new Section 551.0726 which states that the governing body of a state agency may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting, the governing body of that agency votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person, and the attorney advising the governing body issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person. The governing body for a state agency must make a tape recording of the proceedings of a closed meeting permitted under this bill; provides exceptions.

Amends Section 2155.078 of the Government Code by adding Subsection (o) to require the Texas Building and Procurement Commission (TBPC) to develop and implement a continuing education course on cost analysis and price negotiation. State agency purchasing personnel who attend this course must review the course and provide this review to the commission.

Amends Chapter 2155, Subchapter B, of the Government Code to add Section 2155.085 requiring the TBPC to publish a report on the number and dollar value of sole source purchases made and open market purchases made or contracts awarded for which there were fewer than three responses to the contract or open market solicitation in the previous calendar year. Each state agency is required to provide the commission with timely information for the purpose of creating this report; the commission is required to establish requirements for the provision of this information, but is prohibited from requiring a state agency to provide information on a health and human services contract if the value of the contract cannot be determined at the time of the execution of the contract and any qualified vendor is eligible for the contract.

Amends Section 2262.053 of the Government Code to require TBPC to establish minimum qualifications for certifying contract managers and to require TBPC to develop guidelines by

which a state agency is required to involve a contract manager during various stages of the contracting process.

Amends Chapter 2262, Subchapter B of the Government Code, to require that each state agency develop a plan for incorporating performance measures into an appropriate percentage of contracts for services entered into by an agency; requires state agencies to determine the appropriate percentage in consultation with TBPC.

Requires TBPC and the Department of Information Resources (DIR) to jointly review the options for establishing an information-sharing portal for use by state agencies in contract management and administration and, if the TBPC and DIR determine that establishing the portal is cost-effective, establish the portal.

Requires TBPC to develop and publish a uniform set of definitions and a uniform and automated set of forms, including sample contracts and contract terms, for use in different stages of the contracting process.

Amends Chapter 2262 of the Government Code, by adding a new Subchapter G on management of major contracts for services; this subchapter only applies to major contracts for services. Requires state agencies to prepare each document required by this subchapter in a manner consistent with TBPC guidelines.

Requires TBPC, in consultation with DIR, to develop and provide guidelines and forms, and to work with state agencies in developing and providing these guidelines and forms, for the documents required by new Subchapter G.

Requires a state agency to prepare a business case providing the initial justification for the contract, including the anticipated return on investment in terms of cost savings and efficiency for the contract, for each proposed contract that meets the criteria in the Contract Management Guide. Requires each agency to file the business case with TBPC and the Legislative Budget Board (LBB) at the same time the agency files its legislative appropriations request.

Amends Section 2262.051 of the Government Code to require the TBPC in consultation with the team, Health and Human Services, and the Department of Transportation to establish criteria in the contract management guide for determining whether a proposed project requires a business case. Requires state agencies to develop a project plan for each major contract, based on criteria in the contract management guide. Except as provided by (c) of this section, state agencies must file their project plan with TBPC before the agency spends more than 10 percent of allocated funds for the related major contract, or first issues a contractor solicitation for the related major contract. Requires that project plan to include a procurement plan and a method for monitoring changes to the scope of the contract. A state agency is prohibited from posting a contractor solicitation for the contract on the Electronic State Business Daily unless the project plan has been filed under Section 2262.304.

Requires state agencies to periodically review and report on a contractor's performance throughout the term of a major contract; TBPC is required to store these contractor performance reviews in a database and to make this database available to state agencies and searchable by contractor, contract value, state agency and date.

Requires state agency executive director (or executive director's designee) and the state agency's designated contract manager to approve and sign each document required by the new Subchapter G added by this bill. If a proposed contract amendment or a change order changes the monetary value of a contract by more than 10 percent or significantly changes the completion date of a contract, the state agency's executive director would be required to approve the amendment or order.

Requires a state agency to contract with a state government entity or a private entity for negotiation services or advice on a major contract if the agency determines that there is substantial need for the negotiation services or advice and the agency cannot adequately perform the negotiation services with its own personnel or cannot perform the negotiation without advice. Authorizes state agencies to contract with private entities for negotiation services or advice only if the agency determines that it cannot obtain the consulting services through a contract with a state governmental entity.

C.S.S.B. 12 79(R)

Requires DIR, in coordination with LBB, TBPC, and the Comptroller, to analyze current automated information systems of state agencies to determine how these systems may be combined to more effectively standardize and synchronize state contract management. Requires DIR to report the results of its analysis by December 31, 2005.

Contract managers are not required to be certified as required by this bill until September 1, 2007. Requires TBPC to develop the continuing education course required by the bill no later than March 1, 2006. State agencies are not required to comply with Sections 2262.303 and 2262.304 (business case and project plan) of the Government Code as added by this bill until the Contract Management Guide has been revised to establish the criteria established in this bill.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

SB 12 and CSSB 12 both make changes to Chapter 2262 of the Government Code, and both seek to address issues that have come to light regarding the state's contracting practices.

CSSB 12 differs from the engrossed bill in the following ways:

CSSB 12 adds the following language:

Amends Chapter 551, Subchapter D of the Government Code, to add a new Section 551.0726 which states that the governing body of a state agency may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting, the governing body of that agency votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person, and the attorney advising the governing body issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person. The governing body for a state agency must make a tape recording of the proceedings of a closed meeting permitted under this bill; provides exceptions.

Amends Section 2155.078 of the Government Code by adding Subsection (o) to require the Texas Building and Procurement Commission (TBPC) to develop and implement a continuing education course on cost analysis and price negotiation. State agency purchasing personnel who attend this course must review the course and provide this review to the commission.

Amends Chapter 2155, Subchapter B, of the Government Code to add Section 2155.085 requiring the TBPC to publish a report on the number and dollar value of sole source purchases made and open market purchases made or contracts awarded for which there were fewer than three responses to the contract or open market solicitation in the previous calendar year. Each state agency is required to provide the commission with timely information for the purpose of creating this report; the commission is required to establish requirements for the provision of this information, but is prohibited from requiring a state agency to provide information on a health and human services contract if the value of the contract cannot be determined at the time of the execution of the contract and any qualified vendor is eligible for the contract.

Amends Section 2262.053 of the Government Code to require TBPC to establish minimum qualifications for certifying contract managers and to require TBPC to develop guidelines by which a state agency is required to involve a contract manager during various stages of the contracting process.

Amends Chapter 2262, Subchapter B of the Government Code, to require that each state agency develop a plan for incorporating performance measures into an appropriate percentage of contracts for services entered into by an agency; requires state agencies to determine the appropriate percentage in consultation with TBPC.

Requires TBPC and the Department of Information Resources (DIR) to jointly review the options for establishing an information-sharing portal for use by state agencies in contract management and administration and, if the TBPC and DIR determine that establishing the portal is cost-effective, establish the portal.

C.S.S.B. 12 79(R)

Requires TBPC to develop and publish a uniform set of definitions and a uniform and automated set of forms, including sample contracts and contract terms, for use in different stages of the contracting process.

Amends Chapter 2262 of the Government Code, by adding a new Subchapter G on management of major contracts for services; this subchapter only applies to major contracts for services. Requires state agencies to prepare each document required by this subchapter in a manner consistent with TBPC guidelines.

Requires TBPC, in consultation with DIR, to develop and provide guidelines and forms, and to work with state agencies in developing and providing these guidelines and forms, for the documents required by new Subchapter G.

Requires a state agency to prepare a business case providing the initial justification for the contract, including the anticipated return on investment in terms of cost savings and efficiency for the contract, for each proposed contract that meets the criteria in the Contract Management Guide. Requires each agency to file the business case with TBPC and the Legislative Budget Board (LBB) at the same time the agency files its legislative appropriations request.

Amends Section 2262.051 of the Government Code to require the TBPC in consultation with the team, Health and Human Services, and the Department of Transportation to establish criteria in the contract management guide for determining whether a proposed project requires a business case or a project plan.

Requires state agencies to develop a project plan for each major contract, based on criteria in the contract management guide. Except as provided by (c) of this section, requires state agencies to file their project plan with TBPC before the agency spends more than 10 percent of allocated funds for the related major contract, or first issues a contractor solicitation for the related major contract. Requires that project plan to include a procurement plan and a method for monitoring changes to the scope of the contract. A state agency is prohibited from posting a contractor solicitation for the contract on the Electronic State Business Daily unless the project plan has been filed under Section 2262.304.

Requires state agencies to periodically review and report on a contractor's performance throughout the term of a major contract; TBPC is required to store these contractor performance reviews in a database and to make this database available to state agencies and searchable by contractor, contract value, state agency and date.

Requires state agency executive director (or executive director's designee) and the state agency's designated contract manager to approve and sign each document required by the new Subchapter G added by this bill. If a proposed contract amendment or a change order changes the monetary value of a contract by more than 10 percent or significantly changes the completion date of a contract, the state agency's executive director would be required to approve the amendment or order.

Requires a state agency to contract with a state government entity or a private entity for negotiation services or advice on a major contract if the agency determines that there is substantial need for the negotiation services or advice and the agency cannot adequately perform the negotiation services with its own personnel or cannot perform the negotiation without advice. Authorizes state agencies to contract with private entities for negotiation services or advice only if the agency determines that it cannot obtain the consulting services through a contract with a state governmental entity.

Requires DIR, in coordination with LBB, TBPC, and the Comptroller, to analyze current automated information systems of state agencies to determine how these systems may be combined to more effectively standardize and synchronize state contract management. Requires DIR to report the results of its analysis by December 31, 2005.

Contract managers are not required to be certified as required by this bill until September 1, 2007. Requires TBPC to develop the continuing education course required by the bill no later than March 1, 2006. State agencies are not required to comply with Sections 2262.303 and

2262.304 (business case and project plan) of the Government Code as added by this bill until the Contract Management Guide has been revised to establish the criteria established in this bill.

CSSB 12 strikes the following:

CSSB 12 strikes language defining "executive director" under 2262.001, Government Code, and instead CSSB 12 defines "department" as the Department of Information Resources. Language that would have added Sections 2262.0015, Government Code, language that would have added Sections 2262.055-2262.064, Government Code, are removed. 2262.065, Government Code, and 2262.066, Government Code, as written in the engrossed version of the bill are replaced with language regarding performance measures and an information sharing portal respectively. Language adding 2262.104 and 2262.105, Government Code, language that would create Subchapters D, E, and F of Chapter 2262 of the Government Code, language that would transfer 2262.003, Government Code, and redesignates it as 2262.156, Government Code, language that would have added 572.060, Government Code, language amending Section 321.020(a), Government Code, and language amending Section 2113.102(a), Government Code are all stricken. Language that would have amended Subsections 2262.053(a) and 2262.053(d) of the Government Code is removed, and Subsections 2262.053(e) and (f) as written in the engrossed version are substituted with new language concerning billing for contract management training and minimum qualifications for certifying contract managers.

CSSB 12 also strikes Article 4 of SB 12 in its entirety.

SUMMARY OF COMMITTEE ACTION

SB 12

May 18, 2005

upon lunch recess

Considered in formal meeting

Committee substitute considered in committee

Reported favorably as substituted

6

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 18, 2005

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to state contract management, including the training of personnel, the negotiation of contracts, and the standardization of practices.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and direct the Texas Building and Procurement Commission (TBPC) to develop and implement a continuing education course on cost analysis and price negotiation, publish a report annually detailing the number, value, and type of purchases made, and jointly evaluate options for establishing an information-sharing portal for contract management and administration with the Department of Information Resources. It is assumed that any additional duties and responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, SR, JM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 18, 2005

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to contracting and ethics issues of governmental entities; providing a civil penalty.), As Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process.

In coordination with the State Auditor, Comptroller, Department of Information Resources, and the Health and Human Services Commission, the Texas Building and Procurement Commission (TBPC) would develop a training program, which would include an abbreviated version for members of governing bodies of state agencies.

Each state agency would have to maintain contracts in a central location. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to TBPC. TBPC would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC may solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

In addition, if a state agency determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of \$10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions, the agency shall create an optimized model for the identified functions or services to determine how and at what cost the agency could most efficiently provide the functions or services.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and

penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

This bill would require school districts, state agencies, institutions of higher education, municipalities, and counties to provide preference in awarding contracts to vendors that provide health benefits coverage to their employees and employees' dependents.

The Texas Building and Procurement Commission would need to revise agency rules, revise contract management guidelines, and revise other procurement forms developed by the agency. It is assumed that these additional duties and responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313 Department of Information Resources

LBB Staff: JOB, SR, KJG, SD, JM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 9, 2005

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to contracting and ethics issues of state agencies; providing a civil penalty.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process not later than March 1, 2006.

In coordination with the State Auditor, Comptroller, Department of Information Resources, and the Health and Human Services Commission, the Texas Building and Procurement Commission (TBPC) would be required to develop a training program by March 1, 2006. TBPC would have to develop an abbreviated version of the training program for members of governing bodies of state agencies. All members of governing bodies would be required to complete at least one course of the training developed under this bill by September 1, 2007. The executive director of a state agency would have to complete the ethics and contracting course annually.

Each state agency would have to maintain contracts in a central location. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to TBPC. TBPC would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC would be required to solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

It is assumed that any additional duties or responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313
Department of Information Resources

LBB Staff: JOB, SD, JM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 9, 2005

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB12 by Zaffirini (Relating to contracting and ethics issues of state agencies; providing a civil penalty.), As Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process not later than March 1, 2006.

In coordination with the State Auditor and the Texas Building and Procurement Commission (TBPC), the University of Texas at Austin (UT-Austin) would be required to develop a training program by March 1, 2006. UT-Austin would have to develop an abbreviated version of the training program for members of governing bodies of state agencies. All members of governing bodies would be required to complete at least one course of the training developed under this bill by September 1, 2007. The executive director of a state agency would have to complete the ethics and contracting course annually.

Each state agency would have to maintain contracts in a central location and provide the Department of Information Resources (DIR) with electronic copies of contracts. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to DIR. DIR would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC would be required to solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are done so outside of the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

The bill would establish guidelines for determining if an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant has a conflict of interest and penalties if the person does not disclose the conflict in writing and abstain from further participation in the decision or action. The penalty would be at least \$500 and would not exceed the value of a monetary gain the person receives because of the decision or action.

It is assumed that any additional duties or responsibilities associated with implementing the provisions of the bill could be absorbed within existing state resources.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 313 Department of Information Resources

LBB Staff: JOB, SD, JM

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

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